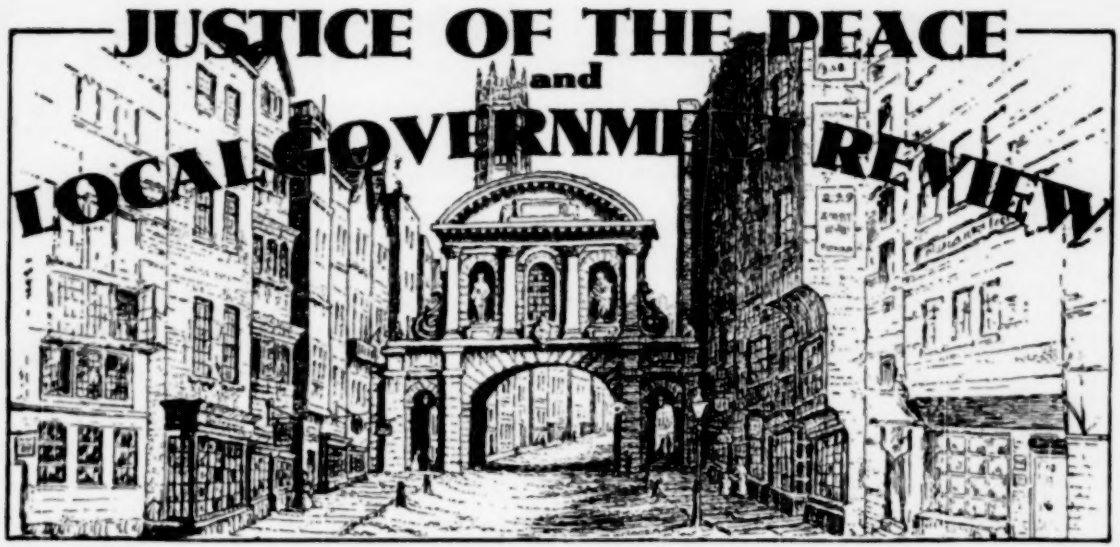

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LEGACIES FOR ENDOWMENT

THOSE making or revising their Wills may like to consider benefiting some selected aspect of Church Army Social or Evangelistic work by the endowment of a particular activity—thus ensuring effective continuance down the years.

Gifts—by legacy or otherwise—will be valued for investment which would produce an income in support of a specific object, of which the following are suggestions:—

1. **Training of future Church Army Officers and Sisters.**
2. **Support of Church Army Officers and Sisters in poorest parishes.**
3. **Distressed Gentlewomen's Work.**
4. **Clergy Rest Houses.**

Preliminary enquiries will be gladly answered by the

Financial Organising Secretary

THE CHURCH ARMY

55 Bryanston Street, London, W.1

A Recommendation to Mercy

In recommending a bequest or donation to the RSPCA you may confidently assure your client that every penny given will be put to work in a noble cause. Please write for the free booklet "Kindness or Cruelty" to the Secretary, RSPCA, 105 Jermyn Street, London, S.W.1.

REMEMBER THE

RSPCA

MISS AGNES WESTON'S

ROYAL SAILORS RESTS

PORTSMOUTH (1881) DEVONPORT (1876) GOSPORT (1942)

Trustee in Charge:
Mrs. Bernard Currey

All buildings were destroyed by enemy action, after which the Rests carried on in temporary premises. At Devonport permanent quarters in a building purchased and converted at a cost of £50,000 have just been taken up whilst at Portsmouth plans are well advanced to build a new Rest when permission can be obtained.

Funds are urgently needed to meet heavy reconstruction commitments and to enable the Trustees to continue and develop MISS WESTON'S work for the Spiritual, Moral and Physical Welfare of the ROYAL NAVY and other Services.

Gifts may be earmarked for either General or Reconstructional purposes.

Legacies are a most welcome help

Not subject to Nationalisation.

Contributions will be gratefully acknowledged. They should be sent to the Treasurer, Royal Sailors Rests, Buckingham Street, Portsmouth. Cheques, etc., should be crossed National Provincial Bank Ltd., Portsmouth.

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

BEDFORDSHIRE COUNTY COUNCIL

SHORTHAND/TYPIST required in the department of the Clerk of the Council. Salary on General Division Scale with special increments for certain qualifications. Experienced in legal and conveyancing work. 38 hour week; one Saturday off in four; staff canteen. Apply immediately to Establishment Officer.

J. B. GRAHAM,
Clerk of the County Council.

Shire Hall,
Bedford.
19th October, 1950.

HORNCHURCH URBAN DISTRICT COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with Grade VII of the National Scale of Salaries (£635 per annum, rising by annual increments of £25 to £710 per annum).

The Council will provide housing accommodation for the successful applicant, if required.

Conditions of appointment and application forms (returnable by November 10, 1950) can be obtained from the Clerk of the Council, Council Offices, Billet Lane, Hornchurch, Essex.

P. L. COX,
Clerk of the Council.

Council Offices,
Hornchurch.
October, 1950.

BOROUGH OF LOWESTOFT

Appointment of Deputy Town Clerk

APPLICATIONS are invited from solicitors with municipal experience for the appointment of Deputy Town Clerk at a salary in accordance with Grade A.P.T. VIII of the National Salary Scales (£685 × £25—£760).

The appointment is subject to the National Joint Council's Scheme of Conditions of Service and the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination. The appointment will be subject to one month's notice on either side.

Applications, endorsed "Deputy Town Clerk," stating age, qualifications and experience accompanied by copies of not more than three recent testimonials and giving the names of three persons to whom reference may be made must reach the undersigned not later than noon on Wednesday, Novemebr 15, 1950.

Canvassing, either directly or indirectly, will be a disqualification and applicants should disclose any relationship within their knowledge to a member or senior officer of the council.

F. B. NUNNEY,
Town Clerk.

Town Hall,
Lowestoft,
October 26 1950.

GLOUCESTERSHIRE COUNTY COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited from solicitors for the whole-time appointment of assistant solicitor on the staff of the clerk of the county council. The salary will be in accordance with Grade A.P. & T. IX of the National Scales of Salaries (£750 × £50—£900 p.a.).

Candidates must have been admitted at least three years and have a sound knowledge of conveyancing and general legal work.

The successful candidate must pass a medical examination and the appointment will be terminable by three months' notice in writing on either side.

Applications, stating age, qualifications and experience, and giving the names of two referees, should be despatched so as to reach the undersigned not later than October 31, 1950.

Canvassing will disqualify.

GUY H. DAVIS,
Clerk of the County Council.

Shire Hall,
Gloucester.

HARROW URBAN DISTRICT COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the permanent appointment of assistant solicitor in the department of the Clerk of the Council. Salary in accordance with A.P.T. Grades VI-VIII (£625—£790 per annum, including London weighting). If the successful candidate has had two years' legal experience from the date of admission he will be entitled to a commencing salary within A.P.T. Grade VII (£665—£740 per annum, including London weighting).

Candidates should be experienced in conveyancing and advocacy; and experience in local government, including planning law and committee work, is desirable.

The appointment will be subject to the Scheme of Conditions of Service of the National Whitley Council and to the passing of a medical examination.

The council is unable to offer the successful candidate any assistance in obtaining housing accommodation.

Applications, endorsed "Assistant Solicitor," giving full details of age, present and past appointments, qualifications and experience, and the names of three persons to whom reference may be made, should reach the undersigned not later than November 4, 1950.

Canvassing will disqualify, and the applicant must disclose in his application whether he is related to any member or senior officer of the council.

H. WELLS,
Clerk of the Council.

Council Offices,
Harrow Weald Lodge,
Harrow.

METROPOLITAN BOROUGH OF FULHAM

Assistant Solicitor

APPLICATIONS are invited from solicitors for this appointment.

Salary within A.P.T. Grades VI-VIII (£595 × £25—£760) plus weighting. Commencing salary according to experience.

Previous local government experience is essential.

Applicants must have a sound knowledge and experience of conveyancing, advocacy, court practice and the preparation of contracts and agreements of all types.

Applications, stating age, qualifications and experience, present and past appointments, together with the names of two referees and endorsed "Assistant Solicitor," must be delivered at my office not later than November 8, 1950.

Canvassing will disqualify.

CYRIL F. THATCHER,
Town Clerk.

Town Hall,
Fulham, S.W.6.

CITY OF LEEDS

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the above appointment.

Applicants must not be less than 23 nor more than 40 years of age except in the case of a serving full-time probation officer. The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with such rules and subject to superannuation deductions.

The successful candidate will be required to pass a medical examination.

Applications, stating age and qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than Monday, November 13, 1950.

T. C. FEAKES,
Secretary to the Probation Committee.

The Town Hall,
Leeds, 1.

SITUATION VACANT

BUSY Common Law firm, Bradford, Yorkshire. Partner requires qualified or unqualified personal assistant to work alongside with him with only slight supervision in the preparation of cases for assizes, sessions, police court and in the general conduct of common law department. Salary commensurate with experience and ability. Every prospect of advancement. Pension scheme. House found if necessary. Write Box B.22 Office of this Paper.

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DIVORCE—DETECTIVE AGENCY. T. E. HOYLAND, **Ex-Detective Sergeant,** Member of B.D.A. and F.B.D. Observations; confidential inquiries and Process serving anywhere. Agents in all parts of the country. Own car.—1, Mayo Road, Bradford. Tel.: 26823, day or night.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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Price 1s. 8d.

NOTES of the WEEK

The Lord Chancellor on the Justices of the Peace Act

Much of Lord Jowitt's presedential address to the annual general meeting of the Magistrates' Association was devoted to the Justices of the Peace Act. The Lord Chancellor observed that the Act was not popular everywhere among magistrates, and in particular the setting of an age limit was unwelcome to many. He reminded the meeting that those who were placed on the supplemental list were still justices of the peace. Some 4,000 names had been placed on the supplemental list in the last few months, and in dealing with so many in a short time it had been impossible to send suitable letters of appreciation and thanks in all cases, but the omission was being repaired. The work of lay justices was highly valued. The setting up of an age limit was a difficult matter, and it might well be that some justices who had passed the new age limit were still sitting, because the Lord Chancellor's department was not in possession of accurate information in all cases.

As to the size of benches, statutory rules would be issued shortly. At county quarter sessions the number of justices would be limited to eight in addition to the chairman, and in petty sessions the maximum would be seven. Chairmen of petty sessions would be elected by secret ballot.

Referring to certain sections of the Act not yet in force, Lord Jowitt said he regretted that he could not give any definite dates for their coming into force. Financial considerations were involved, and it might be impossible to implement some of the provisions as early as he would like. As to the new magistrates' courts committees he recognized them as the pith and kernel of the Act, but they could not be set up immediately.

The Lord Chancellor emphasized the importance of contact between his department and the Magistrates' Association, and he said that the Lord Chancellor was there to stand up for lay justices if they were wrongly criticized or held up to ridicule.

Theories of Punishment

Lord Oaksey, now a Lord of Appeal in Ordinary and formerly a Judge of the King's Bench Division, addressed the Association on Theories of Punishment—a summary of which appears at p. 620, *post*. He spoke as one having a long experience at the Bar, as a justice of the peace, and as a chairman of quarter sessions.

At the outset he said that his own views were not always in accord with Home Office policy, or with some of the views to which effect was given in the Criminal Justice Act, 1948.

As a principal object of punishment was to protect society, and prevent private vengeance, he held that for crimes of the utmost savagery there should be such punishment as would strike fear in the heart of the most hardened criminal, and that judges and magistrates should have power to prescribe not only the duration of a sentence of imprisonment but also its nature. It might be that today too much power to decide this matter was placed in the hands of the executive, and too little entrusted to the courts. It must be remembered that the court judged the conduct of the offender when he was free and it heard all the evidence; prison authorities had not heard the evidence and they judged the prisoner in prison, where sometimes the most desperate man seemed comparatively harmless. In his opinion, a long sentence under mild conditions was not as effective as a shorter sentence under harsher conditions. As to corporal punishment, if it was not an effective deterrent, why was it retained for prison offences? Why was the general public not given the same protection as prison officers? Perhaps the public was in a worse position through having no trade union.

Lord Oaksey added that all this did not mean that as a judge he was unmerciful. He felt sure he was not, and he was always ready to be lenient in suitable cases, and he believed in probation, though he would not often use it more than once. He passed on as well worthy of consideration a suggestion made by Sir Leo Page that suspended sentence, as in use in some other countries, might sometimes be more impressive and effective than simple probation.

Lord Oaksey said he did not intend anything he had said to be interpreted as a criticism of the probation system or of short or lenient sentences, or of the existing categories of punishment, except that they were too few, and none of them adequately severe for certain classes of violent or persistent offenders.

Lord Templewood, chairman of the Association, in introducing Lord Oaksey and expressing appreciation of his willingness to spare time to address the meeting, said that he and Lord Oaksey were not always in agreement. In fact Lord Templewood, in his own address earlier, also summarized at p. 619, *post*, had given a much more hopeful picture of the position in relation to crime generally, and had spoken appreciatively of the new methods of treatment included in the Criminal Justice Act.

Juvenile Court Justices to Retire at Sixty-five

The Juvenile Courts (Constitution) (Amendment) Rules, 1950 (S.I. No. 1627 (L.25)) came into operation on November 1, 1950, and provide that, subject to certain exceptions, no justice shall be a member of a juvenile court panel, on or after February 1, 1951, after he has attained the age of sixty-five and the appointment of any member of a panel who, on that date, has already reached the age of sixty-five shall cease on that date. The exceptions are that the Lord Chancellor may allow the continuance on, or appointment to, the panel of a justice over sixty-five if he is satisfied that in any area it is necessary to make such an exception in order to have enough justices on the panel, and that the age limit is not to apply to a stipendiary magistrate holding office as such.

The rules do not apply to the Metropolitan Court area and the City of London, (the work of the latter is now done in the metropolitan courts, Justices of the Peace Act, 1949, s. 11 (5)) but we understand that the same age rule is already being applied to justices sitting in the metropolitan juvenile courts.

The 1950 Rules also make certain amendments in the 1933 Rules by substituting for rr. 9 and 10 in those rules a new r. 9 and new r. 10. The new r. 9 provides that when a justice is appointed to the panel *to fill a vacancy* the justice so appointed shall serve on the panel until the end of the period *for which the panel was appointed* and not, as before, until the end of the period for which the member he replaces was appointed. The new r. 10 requires the clerk to the justices to notify the Secretary of State of the name and address of every justice who is appointed to serve on the panel, *or who ceases to be a member thereof, and the notification is to specify the rule under which the appointment is made or the circumstances in which the justice ceased to be a member.*

The Cost of Probation

The fact that a particular method of treatment of an offender is cheaper than another can never of itself be a good reason for using the cheaper method, but it is interesting to note figures given in the half-yearly report of the principal probation officer for the Devon combined probation area. It is stated that the average case load of probationers in the county is about 380 and that if this figure is divided into the average annual budget of about £6,500 the cost per case is about £17. This average is higher than it would be if due allowance were made for the other work done by probation officers which ought not to count against the probation cases proper. We do not know whether it takes into account the cost of residence in hostels, etc., but whether it does or not the cost of a case on probation obviously compares extremely favourably with the admittedly high cost of maintaining an offender in an approved school, borstal institution, or prison. The report suggests for this a probable average of about £200 a year, but we do not know whether this is accurate. If, therefore, probation can be successfully used it should mean not only a large initial economy but also, by putting the offender on the right road for the future, it should offer the prospect of avoiding the expense to the public which would be involved if the offender, without that guidance, were to commit further offences.

It is heartening to read in the same report of three cases in which probation, accompanied by residence in a probation home or hostel, produced highly satisfactory results by turning offenders who were fast drifting into really bad habits into useful citizens who are a credit to themselves and to their families.

American Commentary

It is always interesting, and should be instructive, to see ourselves as others see us. In the October issue of the *Approved Schools Gazette* there appears a short report by a girl scout from the United States of America on a visit she paid, as a guest of the Girl Guide Association, to a guide company in an approved school. She spent a week there. She was, so she states, most impressed by the sincere kindness and understanding given to each child. She found that so little were the staff concerned with the past offences of the pupils that if she asked why a particular girl was in the school the record had to be referred to to provide the information. She was impressed by the opportunities given to the girls for self-expression by allowing them, on appropriate occasions, a choice as to the clothes they would wear. She found on a number of occasions that the girls referred to the school as "home." To quote her last paragraph "I enjoyed my visit very much and was, of course, sorry to leave. However, I am glad to know that the girls at St. Mary's are in such capable hands and sincerely hope that this is true of all approved schools."

It is, we think, a matter of some importance that a visitor from abroad should gain such an impression of one of our approved schools, not from a casual visit, but by living with the girls for a week. We feel that she paints a true picture, and that it is most encouraging to know that it is on these lines that this particular school and we hope, many others, are being run.

Conditional Discharge to Avoid Disqualification

Taylor and another v. *Saycell* (1950) *see post*, p. 617, is one more to be added to the many cases decided by the High Court in which the basic question is whether a lower court is entitled, in one way or another, to exempt a defendant from the disqualification which must normally follow a conviction for certain offences under the Road Traffic Acts.

In this case justices in Sheffield convicted two defendants of using a motor lorry without there being in force an insurance policy which covered the particular use to which the lorry was put. A fine of £1 was imposed on each defendant, and disqualifications followed the convictions. The defendants appealed against this sentence, and the learned recorder did not find special reasons why the disqualifications should not be upheld, but stated that he was satisfied that the offence against s. 35 was not serious and that he was justified, therefore, in making an order for the conditional discharge of the defendants which, by s. 12 of the Criminal Justice Act, 1948, would avoid their being disqualified. The prosecutor appealed against this decision.

The contravention of s. 35 arose because the lorry on the occasion in question was being driven by one of the defendants who was not, under the policy, entitled to drive it, and was being used for a purpose not permitted by the policy.

Lord Goddard, reading the judgment of the High Court, said that the Court was quite unable to share the recorder's view that the offence of driving an uninsured lorry, more especially in a city, was not an offence of a serious character. The recorder found no special reasons, and could not have done so, as the defendants gave no evidence. Policies were often taken out with a limited cover to reduce the premium payable. Driving an uninsured vehicle was generally a serious offence, and it was the bounden duty of insured persons to see there was no breach of the conditions of the policy which would entitle the insurer to decline liability. In this case it was not suggested

that the defendants had not understood the conditions of the policy. In any event the Court had laid down that it is the duty of an insured person to know the terms of his policy.

The Lord Chief Justice said that they were not casting doubt on *Quelch* v. *Collett* [1948] 1 All E.R. 252; 112 J.P. 167, in which justices rightly found that, although there were no special reasons in that case, the offender could properly be discharged under the Probation of Offenders Act. There could be no doubt that there was jurisdiction in the courts to discharge conditionally and thereby avoid the necessity for disqualification, but it did not follow that this could properly be done except in the most exceptional circumstances, and Lord Goddard referred to his remarks in *Gardner* v. *James* [1948] 2 All E.R. 1069 and said that he wished to repeat with emphasis what he had said there. He referred also to the case which we noted recently *Pilbury* v. *Brazier*, *see* p. 604, *ante*, in which there was a technical objection no reputable insurance company would take. In the case now before the court there was no suggestion that the insurers would have treated the matter as a technical objection, or have accepted liability had an accident occurred.

The case was sent back to the recorder with an intimation that there was no evidence on which he could properly exercise his discretion to order conditional discharge.

In conclusion Lord Goddard referred to the fact that in such circumstances as arose in this case the disqualification must run from the date of the original conviction before the justices. It was to be hoped that the law would be altered so that where an appellate court imposed disqualification it would run from the date of the decision of the appeal.

Instruction for Justices

The Clerk of the Peace for Middlesex has had prepared and circulated to all justices on the Middlesex Commission of the Peace a "manual of instruction for newly appointed justices." The manual is in two parts. Part I, which occupies the bulk of the space, deals with petty sessional duties and Part II with quarter sessions duties. It must be of the greatest assistance to new justices, and to many others who have not been able to devote much time to their court duties, to have the relevant points so clearly dealt with. Anyone who has attempted the task knows how extremely difficult it is to compress into a few pages, as is done here, the necessary information which a justice needs to give him a broad understanding of the nature of his duties. The importance of strict impartiality is very properly emphasized, and attention is also drawn to the need for paying heed only to the admissible evidence in arriving at a decision. These and other points are dealt with in a chapter on "judicial principles" which it is to be hoped that all justices who receive the manual will read and re-read. As this manual is obviously intended for the instruction of justices we feel justified in saying that there are in it certain mis-statements or omissions which have crept in, without doubt, because of the difficulty of compressing without either becoming vague or omitting some point. We do not propose to detail them here, nor do we consider them likely seriously to mislead those for whom the manual is intended.

Planning Appeals Decisions

On balance, decisions of the Minister of Town and Country Planning in the twenty-three appeals set out in the Ministry's bulletin of selected appeal decisions, No. VIII, were in favour of local planning authorities. Appeals were wholly disallowed in twelve cases, five were allowed and others were partly allowed or otherwise dealt with. Information of the circumstances in which the appeals arose and the reasoning underlying the Minister's decisions will materially assist planning authorities in their administration of much main and considerable subordinate legislation.

Some recent allegations of breaches of the Greater London Plan, in addition to tardy progress in its implementation, lend special interest to an unsuccessful appeal against the refusal of the local planning authority to permit the erection of a factory on a back land site behind the main road of a borough on the outskirts of London. In this decision, the Minister gave encouraging support to planning authorities guiding their actions by current facts and long-term considerations; currently, population of the borough was in excess of that recommended in the Greater London Plan and yet there was a surplus of industry in relation to available labour, and, in the long run, the authority's re-development proposals would bring the area in question within the design of a residential neighbourhood unit. Less success attended the resistance of an authority in the Midlands to an appellant's contention for a period longer than fifteen years in which to make good the capital expenditure required for extensions and alterations to a factory in a congested central area of mixed uses. Important factors in the Minister's decision to discharge the limitation of fifteen years imposed by the local authority, and allow development for twenty-five years, were the absence of detailed planning proposals and of information with respect to the time likely to elapse before proposals in a Development Plan could be carried into effect. This implies early need for positive programmes in place of general outlines.

Tidier and more pleasant appearance of shopping streets was involved in an unsuccessful appeal against amendments required by a northern authority in the design of a shop front; the Minister concluded that compliance with the condition would help to preserve the more than usual architectural merit of the street. Already varied character and no architectural merit of development in the immediate neighbourhood led the Minister to allow an appeal against refusal of planning permission for a proposed dwelling-house in a borough on the outskirts of London. On the other hand, erection of a dwelling-house in a semi-rural area will be allowed, subject to approval of detailed siting and elevation, following a successful appeal against the view of the local authority that a considerable area of the surrounding countryside had been spoiled by sporadic development; apparently, some houses had already been built in the vicinity of the site under appeal, comprising some three acres of arable land overgrown with blackberry and thorn; this appears to be a case of in-filling in keeping with the character of the locality.

Three of the frequently troublesome cases of conversion are exemplified in the Minister's decisions. One appellant was unsuccessful in contending against a determination of a local authority that the change of use involved was material where the two upper floors of a licensed hotel were converted into nine unfurnished self-contained flats. Another appellant was unable to shake a determination by an authority that a dwelling-house to be used as a residential college for religious instruction came within Use Class XIII of the Schedule to the Town and Country Planning (Use Classes) Order, 1948 (S.I. No. 954), as essentially residential. In the third case, the Minister upheld a local authority's determination that planning permission was required to convert into a shop one of three uncompleted shops adapted and used since 1939 as residential accommodation. Bulletin No. VIII makes a significant contribution to a series which assists applicants, possible appellants and planning authorities by the illumination of problems, some common and others not, with the light of sensible reasoning.

TEMPESTUOUS PETTICOAT

We feel a little uneasy about further cases lately reported on the subject of what newspapers persist in calling "masquerading" though we are ready to admit that defects of the popular press, in its statement of the facts, may account for some of what has troubled us. By "masquerading" the reporter means the dressing by men in clothes more normally worn by women: for some reason, the courts never seem to be troubled with cases of the dressing by women in men's clothes. Hence, perhaps, the persistent popular delusion, found amongst persons who might be expected to know better, that whilst a woman may lawfully wear trousers it is unlawful for a man to wear a skirt in a public place. As we showed, we hoped conclusively, in a considered article at 102 J.P.N. 135 this "cross-dressing" as it is sometimes called, or "transvestism" in the barbarous jargon of more or less scientific persons, is never an offence against the law. We dealt once again with this legal point in a further article at 113 J.P.N. 601; it is a fundamental point which cannot be too strongly impressed upon police officers who, it seems, may be prompt to move when they are told about the practice, or upon the clerks to magistrates if cases come before the Bench. Of course, dressing up in any form—in clothes appropriate to the opposite sex, or like Michael Finsbury in windowglass spectacles and whiskers—may be strong evidence of unlawful intent in one direction or another. It may also lead a person, who starts with innocent intentions, into conduct (such as using sanitary conveniences appropriated to the other sex) which is sometimes an offence against local byelaws and may reasonably be sometimes thought likely to cause a breach of the peace. The reason why we return to the topic, and have said that we view some recent newspaper reports with disquiet, is that where there is no criminal intent the foible for dressing up is often a medical rather than a legal matter—not always, for it may be merely a youthful frolic or done for a bet. This last being granted, it is most often an indication of a departure from mental normality, a departure which calls for properly informed treatment, if the patient is to be restored to normal ways of thinking and acting, a process desirable not merely for the practical convenience of himself and his family, but for the general convenience. The worst thing for such a man may be to be obliged to explain himself before the magistrates. In the metropolitan police district there is (for good or evil) an offence which does not exist elsewhere except under other local Acts, namely, "in any thoroughfare or public place ... to use any threatening, abusive, or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned." (We have not forgotten s. 5 of the Public Order Act, 1936: we spoke of it at 113 J.P.N. 161.)

It is important to remember the full terms of this thirteenth enactment in s. 54 of the Metropolitan Police Act, 1839, because there is an obvious temptation to the police to use the provision as a handy weapon for dealing with conduct to which, for one reason or another, they object but which is not otherwise susceptible of prosecution. We should be prepared to argue that the words "insulting behaviour whereby a breach of the peace may be occasioned" (the words of para. 13 in the section which are most commonly quoted) ought to be construed as subject to a strong limitation from their context. But at least the less quoted words ought to be considered as a unit. We showed in our article of last year, by reference to the historical incidents of the Barclays, father and son, how misleading it can be to take one element in the enactment without the other. When looking into the matters then dealt with we stumbled on a parallel but worse provision in a provincial local Act, and no doubt there are others. On the Metropolitan Act of 1839 we now have before us the newspaper account of a prosecution outside the metropolitan police court area, but within the metropolitan police district, where a man of twenty-seven was (we quote) "put on probation for two years for insulting behaviour by masquerading in women's clothing": a statement which, taken at its face value, calls for the obvious comment that, even in the metropolitan police district, there is no such offence known to the law as "insulting behaviour," *per se*. The young man was wearing a woman's outer clothing, and looking in shop windows, including a women's underwear shop. In this, by itself, there was nothing likely to lead to a breach of the peace or which could be regarded as insulting. An elderly woman said to a police sergeant: "I am almost sure that person is a man dressed as a woman" and thereupon the sergeant (apparently) arrested him. We have inserted the adverb "apparently" and the words "by itself," in the foregoing sentences, because we realize that more may have happened than was stated in the newspaper; the reporter may, as so often, have fixed his eyes on the skirt and failed to give his readers the facts which mattered from a legal point of view. The man in this case was defended by counsel who put in a plea on medical grounds, war neurosis, etc., but does not (again according to the newspaper) seem to have taken the essential point of law: this makes it the more likely that facts were established to the satisfaction of the court which were omitted from the newspaper. If so, we can only say that the omission is from a public point of view unfortunate, since it must lead to misunderstanding of the law, and probably to needless worry on the part of families and friends of men who have this particular foible. From the point of view from which we approach the matter, it is even more unfortunate when, outside the local Act areas, the police are moved to bring these cases before the magistrates for binding over upon recognizances under 3 Edw. 3, c. 1. Although the putting of a person upon recognizances under the statute of Edward the Third does not involve a conviction—which amongst other things means that the person bound has not the normal right of appeal to a higher court: *R.* v. *London Quarter Sessions* [1948] 1 All E.R. 72; 112 J.P. 118—the stigma upon him is virtually the same as if he had been convicted of an offence, and the consequence may be mental shock if he is, in truth, a person requiring medical attention. We dealt recently at p. 466, *ante*, with proceedings upon recognizances for "good behaviour towards the King and his people," showing in what sort of case the higher courts had held that magistrates might properly put a person thus upon recognizances. The performing of an act in itself innocent, like cross-dressing, is not within the principles which have been laid down, and it is *prima facie* regrettable that, as stated in another newspaper, a provincial bench should have treated that Act as a ground for putting a man of forty-one upon recognizances upon his being brought before them by the police for dressing as a woman. Here again we have no adequate statement of the facts: the only relevant matter reported in the newspaper was the police evidence, that the man had sometimes gone into a cinema in woman's clothes, and said he had done so for a bet. Recognizances, if not carefully watched by clerks to magistrates, may become an engine of oppression, and indeed of persecution where applied to persons who need medical attention, even as may the local Act provisions enabling a prosecution to be launched for insulting words or behaviour whereby a breach of the peace may be occasioned.

THE ROAD TRAFFIC PROBLEM

A CALL FOR HIGHER PENALTIES

By " PROSECUTOR "

The ever growing numbers of casualties on our roads appears to present an almost insurmountable problem despite the efforts of local authorities, police and other official bodies.

We are being constantly reminded of our failure to find a solution, and the recent figures for casualties make the most unhappy reading. The month of June showed 425 deaths, and 18,700 injured, and the corresponding month for 1949 showed 399 deaths and 15,683 injured. Any month will show somewhat similar figures proportionate to the time of year, but in themselves figures are rather cold subjects and do not startle the imagination.

To obtain a real perspective one must realize that each figure represents a human being, some quite small children on the very threshold of life, and in every case a very real tragedy occurs some to a greater and some a lesser degree. In other words, 425 persons were killed or died as a result of a traffic accident in June last, 18,700 being injured, and there is no reason to suppose that the high figures are likely to diminish for succeeding summer months.

The rate of deaths and injuries have assumed such proportions that if they were war casualties they would be treated with grave alarm. Nevertheless, despite the tremendous efforts made to educate all users of the road in road courtesy, there is not even the smallest sign of success.

That Parliament has realized the seriousness of the situation has been apparent, not only by its practical efforts, but by the penalties which it deemed advisable to pass in the Motor Car Act, 1903, and subsequently in the Road Traffic Act, 1930. It is these penalties which the writer would like considered on the ground that a more drastic implementation of them may well help to solve the problem. That they are not generally used to the extent they should be in order to act not only as a punishment to an individual but as a real deterrent to others, is fairly obvious from the results of cases taken under ss. 11 and 12 of the Road Traffic Act, 1930. It may well be that the time has come for a greater realization by the courts of powers whereby they can indeed make drivers of vehicles understand that to offend is just not worth while.

Let us turn back to the year 1903 when the Motor Car Act was passed. The motor vehicle was only just coming into its own and a wise Parliament decided to pass the Act, the very first section of which read as follows :

" If any person drives a motor car on a public highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the highway, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be on the highway, that person shall be guilty of an offence under this Act."

A comparison with s. 11 of the Road Traffic Act, 1930, will show that the wording is very similar except that " negligently " has been omitted. In place of this word a new offence was created in s. 12 of the 1930 Act which dealt with a person who drives without due care and attention or without reasonable consideration for other persons using the road.

By s. 11 of the Motor Car Act, 1903, a person guilty of an offence under s. 1 of that Act was liable on summary conviction to a fine not exceeding £20, or in the case of a second or subsequent conviction to a fine not exceeding £50 or imprisonment for three months.

For the offences under s. 12 of the Road Traffic Act, 1930, the penalty is exactly similar, but for the more serious offences under s. 11, the fine becomes £50 or four months' imprisonment, and in the case of a second or subsequent conviction either to a fine of £100 or four months, or to both such fine and imprisonment. As the possibility of imprisonment above three months is present, s. 17 of the Summary Jurisdiction Act, 1879, applies, and the accused has the right of election to go for trial. On conviction on indictment for an offence against s. 11, the punishment is for a term not exceeding two years, or to a fine or both fine and imprisonment.

It is quite clear from the above that Parliament had decided by 1930 that the penalties imposed by the Act of 1903 were now inadequate to meet the situation, and greater punishment must be inflicted in order to stop the menace which endangered our daily life.

With regard to endorsements and disqualifications of licences, the position changed as follows :

Under the 1903 Act the court could suspend a driver's licence for such time as it thought fit and disqualify the driver from obtaining another licence for such further time after the expiration of the licence as it thought fit, and in any event the court was compelled to endorse the licence with particulars of the conviction.

Under the 1930 Act, the court cannot disqualify on a first or second conviction under s. 12 for a longer period than one month on the first conviction and three months on the second, but there must be an endorsement, unless for any special reason the court sees fit to order otherwise.

For the offences under s. 11, however, the court must endorse the licence with particulars of the conviction and on a second or subsequent conviction it must disqualify the offender for holding or obtaining a licence for any period it thinks fit unless the court, having regard to the lapse of time since the date of the previous offence, or for some other special reason, thinks fit to order otherwise, and the court can disqualify for the first offence.

The value of money was far less in 1930 than it was in 1903, and is still less in 1950. Throughout the years, however, the fine for careless driving (" negligent " as it was in 1903), has remained the same, and despite the ever increasing road toll of life and limb, offenders are rarely fined the maximum penalty. So often does one find a conviction under s. 12 of the 1930 Act followed by a nominal fine of £2 or £3, sometimes less, and in a case under s. 11, a fine of £5 or £6. If the maximum penalty for an offence under s. 12 is £20, it seems on the face of it to be ludicrous to fine a person less than that sum when he is found guilty of an offence under s. 11 for which the maximum is £50.

In a great many cases the defendant is further ordered to pay witnesses expenses and sometimes an advocate's fee where the prosecution is legally represented, but here again many courts lessen the amount of the fine in awarding the costs, and amounts in total rarely reach the maximum penalty.

In view of the lack of success in adopting " peaceful " methods in an endeavour to stop the growing cancer of road accidents, is it not time magistrates hardened their hearts and inflicted more

severe punishments? It is a well known fact that a large body of motorists treat the small fines with contempt, and one wonders whether heavier fines would perhaps achieve the object of making the selfish motorist and the road hog think twice before he "chances his arm" as hitherto.

Every day it is possible, indeed almost inescapable, for incidents of the most appalling driving to be seen, and we are rapidly coming to a state where in some places it is almost a death-defying venture to cross a road.

There is little point in blaming pedestrians, for although there are some who are to blame, the figures show an overwhelming balance against the drivers of motor vehicles.

The writer has heard it said in many courts that a small fine would be imposed because otherwise a larger penalty would impose financial hardship on a particular offender, but with all respect to this humanitarian point of view, it might be asked why fines are imposed at all if not to impose sufficient hardship to become a real punishment. Too often the circumstances of the offender are considered favourably, without sufficient regard to the unfortunate suffering of the victims.

Most accidents are caused entirely through selfishness on the part of drivers, the man who loves to go through built up areas at thirty-five miles an hour or must cut in on a line of traffic in order to get past the traffic lights before they change to red and so on. The craze for speed is more in evidence today than ever before, and the disregard for "other persons using the road" is increased in consequence.

In the opinion of the writer, the liable penalties in the 1930 Act are adequate, and the time has come for these to be used to their fullest extent. Let justice be not so blind and, whilst always taking its course fairly, it must also be fearless, and it may well be that in this way the battle will be won and humanity saved from a peril as great as any plague or war.

IRREPARABLE HOUSES

In a contributed article at p. 434, *ante*, under the title "Premises in Disrepair: the Public Health Act or the Housing Act," the phrase occurs "An owner is not likely to appeal to the court (on the ground) that his house cannot be made fit at a reasonable expense." A learned correspondent at Kidderminster has, in this connexion, been good enough to supply us with notice of a case heard, while our article was in the press, at Kidderminster county court.

The town council had issued notices under s. 9 of the Housing Act, 1936, calling on the owner to repair twenty-three dwelling-houses, forming a square, and the owner appealed to the county court upon the statutory ground mentioned above. The council's surveyor estimated the probable cost of repairs as being a few pounds below £3,000; the owner's expert witnesses estimated the cost as about £5,000. The difference of some £2,000 might have made all the difference between reasonable and unreasonable expenses, but the learned judge went further, and held that even the amount of the surveyor's estimate (though probably too low) was higher than it would be reasonable to spend, looking to the condition of the property and the relatively infinitesimal return to be obtained for the outlay. (Here comes in by implication the old trouble of the Rent Restrictions Acts, in relation to expenditure by owners.) It is tempting to argue, and we gather it was argued on behalf of the local authority in this Kidderminster case, that if a person has so neglected his property that it has got into a state which he himself declares is past repair at a reasonable cost (and has gone on letting it to tenants while it was getting into this state) this is a factor to take into account. In other words, that expense which would be unreasonable for a good landlord may be reasonable to enforce upon a neglectful landlord. The learned judge, however, refused to accede to this argument, for which there is no support in the Act itself.

He evidently thought that reasonableness in this context, *i.e.*, what is reasonable expense to incur upon repairs, was to be determined by an objective standard, though the papers forwarded to us do not show that he was referred to *Johnson* v. *Leicester Corporation* (1934) 98 J.P. 165, where in the converse case, *i.e.*, a case under s. 11 of the Act, Slessor, L.J., said: "Reasonableness of the expense must be considered objectively . . . the general position of the house, the cost of labour and building material, the situation of the town and the like."

Our Kidderminster correspondent draws the conclusion that, upon the reasoning underlying the county court decision, notices under s. 9 of the Act of 1936 are likely to be quashed on appeal whenever property is in need of substantial repair, and that, accordingly, the Act is of little avail to those who in times of housing deficiency are forced to live in badly dilapidated property.

This, we think, is true, if instead of "the Act" one says that s. 9 and s. 11 are of little use to such persons. The real answer is that s. 9 and s. 11 were not designed to stand alone. The two sections provide for repair of property which at reasonable expense can be made habitable; destruction of property which cannot. So far, the person who lives in the "badly dilapidated property," *i.e.*, the irreparable property, is not helped—the property is not repaired for his continued use, and, if the local authority does its duty, he is turned out of it.

But so far only. These sections are to be considered in conjunction with the Act as a whole. It is the local authority's duty to provide houses for persons needing them; the family whose house falls under the blow inflicted by s. 11, instead of the beneficent helping hand of s. 9, ought to have a home provided in place of that which it has lost. But if the old home is not incapable of repair, then it would be an unreasonable burden upon the public to oblige them to provide the family with a new one.

Section 9 thus falls into place. It enables the tenant to keep his home, and, more important in many cases, to do so at a rental which (as the law stands) is likely to be a great deal less than the rent of a new house—and even as the law stood in 1936 would normally be appreciably less. The tragedy of the present situation is that the person forced by the housing shortage to live in badly dilapidated property is, by that same shortage, deprived for an indefinite period of the hope of a proper home in place of that which is past repair. The pulling down of his present home would usually mean crowding the tenant and his family into some other person's house, and therefore the local authority quite understandably, is hesitant about pulling down the present home.

This, however, is not the fault of s. 9 or s. 11, or of the scheme of the Housing Act, 1936. It is the fault of events in larger spheres which have bedevilled housing in the years since 1936.

LOCAL AUTHORITY ACCOUNTS, 1949/50

The van of local authority treasurers have now published the accounts of their authorities for the year ended March 31 last, and the printed volumes, summarizing as they do the cost of the twelve months' work, make interesting reading, particularly because the year 1949-50 is the first in which new services have operated for the full period. Considerations of space limit comment, and in this article we propose to refer only to two publications, hoping at a later date to review others.

The Accounts of the Hertfordshire County Council, published by the County Treasurer (Mr. R. S. McDougall, A.C.A., F.I.M.T.A.), are attractively printed and, as is usual, promptly presented. They indicate a healthy financial position with revenue balances amounting to £728,000 and net loan debt on county council account £4,400,000, or about 19*s.* per £ of rateable value. Rate poundages for the last three years at 13*s.* 9*d.*, 13*s.* 8*d.*, and 13*s.* 11*d.*, have fluctuated little, and general balances in hand have increased during 1949-50 by £128,000. Revenue expenditure has risen from £6,052,000 in 1947-48 to £6,696,000, in 1949-50, but government grants have increased by £696,000 over the same period, thus counter-balancing the increased outlay. In spite of restrictions on capital expenditure the County Council has carried out works during the year at a total cost of £1,598,000, no less than £1,091,000 of which represents new construction, mostly on education account. £279,000 of the total expenditure was charged direct to revenue account.

The Derbyshire County Council is another authority which produces its accounts early, and in this case also the County Treasurer (Mr. T. Watson, A.S.A.A., F.I.M.T.A.), has published an interesting and well printed book, including a useful preface commenting on outstanding points of interest. With a population of 678,000 as compared with Hertfordshire's 596,000 Derby revenue expenditure totalled £7,248,000, 70 *per cent.* of this sum being met by Government grants as compared with 47 *per cent.* in Herts. The revenue balance in hand of £996,000 indicates financial strength, and rates have been reduced by 1*s.* in each of the last two years to 10*s.* Capital expenditure during the year amounted to £510,000, nearly £400,000 of which was for the education service.

Both sets of accounts contain a number of useful cost statements and we hope this practice will be adopted more widely, because whereas by themselves, comparisons of total service costs between one local authority and another mean little or nothing to the average councillor he or she can readily be interested in comparisons of unit costs of services, for example, the cost of providing each meal for school children or the cost per mile run of the ambulance service. The more the local governors display an educated interest in such matters, the more efficient services will be, and the local governed will benefit accordingly. In making comparisons there are to be borne in mind various matters on which the financial officer would advise his authority; but when these points have been allowed for differences remain which mirror differing schemes of organization and methods of working. Inquiry into the reasons for such differences is often fruitful.

Extracts from the cost statements of the two counties which may be of interest to our readers are set out below :

1. *Ambulance service*	*Derbyshire*	*Hertfordshire*
Gross cost of directly operated vehicles	£74,160	£95,241
Mileage of directly operated vehicles	960,900	706,200
Gross cost per mile of directly operated vehicles	1*s.* 7*d.*	2*s.* 8*d.*

2. *School Meals Service*	*Derbyshire*	*Hertfordshire*
Gross cost per meal :		
Food	6.28*d.*	5.97*d.*
Overheads	7.46*d.*	7.04*d.*
	13.74*d.*	13.01*d.*
Number of meals served ..	9,265,000	9,203,000

3. *Day Nurseries*	*Derbyshire*	*Hertfordshire*
Total cost per child per day ..	9*s.* 3*d.*	8*s.* 3*d.*

The maximum amount which may be recovered from the parents is the actual cost to the authority of food supplied to the children—a relatively small part of the total cost.

Other interesting and enlightening figures are given in the abstracts of the two authorities, such as the net cost to rates of certain services for which fees are payable. The following are quoted :

1. *Registration of Births, Deaths and Marriages*	*Derbyshire* £	*Hertfordshire* £
Expenditure	14,210	16,176
Fees	6,300	6,250
Net charge to Rates	£7,910	£9,926

(The difference is partly accounted for by the charge of £1,002 made in Hertfordshire for central administration.)

2. *Weights and Measures Inspection*	£	£
Expenditure	5,653	7,652
Fees	1,130	480
Net charge to Rates	£4,523	£7,172

(In Derbyshire this service is administered only in part of the county by the county council.)

The interesting point here is the substantial deficit left to be met by the ratepayers on services which it may be thought should be financed by the fees of users. The gap between expenditure and income has grown steadily wider for many years, and we referred to the matter in an article in our issue of April 29 last. In this connexion figures showing the cost of the Weights and Measures Service in another county for the years ended March 31, 1904 and 1950 are interesting :

	1904 £	1950 £
Expenditure	602	14,700
Fees for Stamping	1,042	1,380
Surplus	440	Deficit 13,320

The small increase in fees as compared with the enormous rise in expenditure is most striking.

Another point of an allied nature must be present in the minds of many county council members, and particularly those interested in agriculture. We refer to the increasing cost of repairs and maintenance of smallholdings, and because rents have not increased correspondingly, of the increasing burden laid on the rates by this service. Rents of holdings can be reviewed in accordance with the provisions of the Small Holdings and Allotments Act, 1926, and the Agriculture Act, 1947, and probably authorities are considering what can be done.

The cost of children's homes has increased considerably as compared with previous years. In Hertfordshire revenue costs for maintaining a child for a week ranged from £2 19*s.* 5*d.* to £5 13*s.* 5*d.*, the corresponding figures in Derbyshire being £3 10*s.* 9*d.* and £4 11*s.* 11*d.* Costs of staff, provisions, clothing and other maintenance items have all risen, of course, but, in addition, a higher standard is being imposed everywhere by the Home Office. In one authority, which may be typical of many others, the number of children in relation to the number of staff is represented by a ratio of less than three to one.

We hope the increased attention and care which should be possible will bring appropriate results; the uncertain future will show. The present certainty, however, is that at an average cost of £2 per week it is cheaper (and in suitable cases probably better for the child also) that the policy of boarding out should be encouraged.

WEEKLY NOTES OF CASES

CHANCERY DIVISION

(Before Danckwerts, J.)

CRYSTAL PALACE TRUSTEES *v.* THE MINISTER OF TOWN AND COUNTRY PLANNING

October 5, 6, 1950

Town and Country Planning—Land held on charitable trusts—Promotion of industry, commerce and art—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 85 (1).

APPEAL by the trustees of the Crystal Palace under s. 92 (2) of the Town and Country Planning Act, 1947, on a question of law against a decision of the Minister of Town and Country Planning, dated October 26, 1949, and an application for a declaration that the lands known as the "Crystal Palace and Park" were, and ought to have been held by the Minister to have been, land held on charitable trusts to which s. 85 of the Act applied.

The Crystal Palace trustees were incorporated by the Crystal Palace Act, 1914, and were the successors of the Crystal Palace Company which was incorporated by Royal Charter. They owned and managed the site and grounds to which the Crystal Palace had been removed after the Great Exhibition of 1851. By s. 14 of the Act of 1914 the trustees were to have the entire control and management of the palace and the park as a place for "education and recreation and for the promotion of industry, commerce and art . . ." The building was used extensively for livestock shows, musical festivals, scientific, social and entertaining events, and for rallies and demonstrations of various organizations. The grounds were used for tennis courts, bowling greens, boating lakes, a football ground and a speedway track, a sports ground, an exhibition of reproductions of antediluvian animals for the education of children and others, and bandstands for music. Certain portions of the grounds had always been open free to the public, and facilities and amenities thus provided were of great benefit to the public. The rent and interest from investments received by the trustees had always been exempt from income tax under the Income Tax Act, 1918, s. 37. On October 26, 1949, the Minister of Town and Country Planning determined that the land held by the trustees was not held on charitable trusts or for charitable purposes within s. 85 of the Town and Country Planning Act, 1947, and from that decision the trustees appealed under s. 92 (2) of the Act.

Held, the intention of the Crystal Palace Act, 1914, in including in the objects the promotion of industry, commerce and art, was to benefit the public and not to further the interests of individuals, and the promotion of those objects in general in such circumstances was a public purpose of a charitable nature, and the land, accordingly, was held on charitable trusts or for other charitable purpose within s. 85 of the Act of 1947.

Counsel: *Charles Russell, K.C.*, and *Wilfrid Hunt* for the trustees; *Denys B. Buckley* for the Minister of Town and Country Planning.

Solicitors: *John Holmes, Son & Patteson* for the trustees; *Treasury Solicitor* for the Minister.

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Byrne and Ormerod, JJ.)

TAYLOR AND ANOTHER *v.* SAYCELL

October 16, 1950

Road Traffic—Driving while uninsured—Disqualification imposed by justices—Appeal to quarter sessions—Substitution of order of conditional discharge—Discretion of appellate court—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 35 (2).

CASE STATED by the recorder of Sheffield.

An information was preferred at Sheffield magistrates' court by the appellant, Saycell, a police officer, charging the defendants, Taylor and Marriott, who carried on business in partnership as haulage contractors, with unlawfully using a motor vehicle on a highway without there being in force a policy of insurance against third party risks, contrary to s. 35 (1) of the Road Traffic Act, 1930. The justices found the offence proved and fined each of the defendants, and also ordered that they be disqualified for holding or obtaining a licence under Part I of the Act for twelve months. The defendants appealed to quarter sessions against sentence, and the recorder set aside the sentences imposed by the justices and substituted in each case an order of conditional discharge under s. 7 of the Criminal Justice Act, 1948, but, on the application of the prosecutor, he stated a Case on the question whether there was any evidence on which he could properly exercise his discretion to make an order of conditional discharge, thereby removing the disqualification imposed by the magistrates.

The material facts were as follows. The defendant Taylor drove a lorry belonging to the partners for the delivery of coal at miners' houses. The policy of insurance then in force provided that it should be effective while the vehicle was being used for carrying goods for hire or reward only when the vehicle was driven by the policy holder or any person employed by him under a contract of service who was driving on his order or with his permission. It was further provided that the lorry was only to be used for the carriage of goods on behalf of a named company and for social, domestic and pleasure purposes of passengers other than for hire or reward. The policy holder was the defendant Marriott, and the coal was being delivered, not on behalf of the company specified in the policy, but on behalf of the partners. The recorder did not find any special reasons for refraining from upholding the disqualification imposed, but expressed the view that the offence was not serious.

Held, that the offence must be regarded as serious; though it was within the jurisdiction of an appellate court to make an order of conditional discharge which could remove disqualification, that course should be followed only in most exceptional cases; and in the present case there were no grounds for following that course. The case must, therefore, be remitted to the recorder with the direction that there was no evidence on which he could properly exercise his discretion to make an order of conditional discharge.

Counsel: *Forrester-Paton* for the prosecution; *Drabble* for the defendants.

Solicitors: *Sharpe, Pritchard & Co.*, for *John Heys*, town clerk, Sheffield; *Bell, Brodrick & Gray*, for *Keeble Hawson, Fennell & Arnold*, Sheffield.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

HOLT *v.* DYSON

October 6, 1950.

Road Traffic—Dangerous driving—Notice of intention to prosecute—Notice sent by post to permanent address—Defendant known by police to be in hospital and unlikely to be discharged—Road Traffic Act, 1930, (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 21 (c).

CASE STATED by Hove justices.

At a court of summary jurisdiction at Hove, an information was preferred by the appellant, Robert Dolphin Holt, a police officer, charging the respondent, Dyson, with driving a motor-car in a manner dangerous to the public, contrary to s. 11 (1) of the Road Traffic Act, 1930. The point was taken on behalf of the respondent that no notice of intention to prosecute had been "served on or sent by registered post to" her, as required by s. 21 (c) of the Act. The respondent had been injured in the accident on November 17, 1949, which gave rise to the intended prosecution, and she was detained in Hove General Hospital from that date to January 23, 1950. The police visited her in hospital on three occasions. On the first two she was either unconscious or suffering from the effects of concussion, but on the third occasion, on November 24, 1949, she was able to recollect part of the route which she had followed. On November 28, 1949, the police sent notice of intended prosecution to the respondent's permanent address at Worthing. The justices found that the police

officer responsible for the prosecution knew that on November 24, 1949, the respondent was at Hove General Hospital and that she was not likely to be discharged from hospital for some considerable time, and they were of opinion that the notice did not comply with the requirements of s. 21. They, accordingly, dismissed the information, and the prosecutor appealed.

Held, distinguishing *Stanley* v. *Thomas* (103 J.P. 241; [1939] 2 All E.R. 636; [1939] 2 K.B. 462), that the police were bound to act reasonably in a matter of this kind, and that, as they could have sent the notice by hand or post to the hospital where the respondent was, but chose instead to send it to an address to which they knew she would not be returning for some time, the justices were right in holding that the notice did not comply with the requirements of s. 21 (*c*). The appeal, therefore, must be dismissed.

Counsel: *Harold J. Brown* for the appellant; *Friend* for the respondent.

Solicitors: *Sharpe, Pritchard & Co.*, for *John E. Stevens*, town clerk, Hove; *Barton, Yeates & Hart* for *Malcolm, Wilson & Cobby*, Worthing.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

NEWMAN v. LIPMAN

October 6, 1950

Street Trading—Street photographer—"Stationary position"—London County Council (General Powers) Act, 1947 (10 *and* 11 *Geo.* 6, *c.* xlvi), *ss.* 15, 17, 29.

CASE STATED by a metropolitan magistrate.

An information was preferred at Bow Street magistrate's court by the appellant, George Newman, a police officer, charging the respondent, Monty Lipman, with having, on April 8, 1950, engaged in street trading from a stationary position, contrary to s. 29 of the London County Council (General Powers) Act, 1947.

On the day in question the respondent, who did not hold a street trading licence, photographed a woman passing in the street, received from her a sum of money, and gave to her a receipt or voucher therefor. When the respondent photographed the woman and again when he received the sum of money from her he was in a stationary position in the street. The money so received by the respondent was by way of deposit for and on account of the price of the completed photograph. The magistrate was of opinion that these facts did not establish street trading within the meaning of the definition in the Act, in so far as the respondent was not occupying the "stationary position" contemplated by s. 17 (2) of the Act and was not selling or exposing or offering for sale any article or thing within the terms of the section. He, accordingly, dismissed the information, and the prosecutor appealed.

By s. 15 of the Act of 1947: "'Street trading' means the selling or exposing or offering for sale of any article or thing in a street." By s. 17 (1): "Subject to the provisions of this Part of this Act it shall be unlawful for any person—(*a*) to engage in street trading in or from a stationary position in any street within a borough; or (*b*) to engage in street trading in any designated street whether or not in or from a stationary position; unless that person is authorized to do so by a street trading licence." By subs. (2): "For the purposes of this Part of this Act a person shall be deemed to engage in street trading on any occasion on which he sells or exposes or offers for sale any article or thing in a street whether or not he regularly carries on the business of street trading and a person shall be deemed to engage in street trading in or from a stationary position in a street if while he is engaged in street trading he or any article or thing exposed or offered for sale by him or any receptacle used by him in connexion with the street trading occupies a stationary position in a street."

Held, that the Act, the object of which was to prevent obstruction, contemplated the sale of goods which were in the street and not the making of a contract in the street, although that contract might be entered into when two people were standing still. The decision of the magistrate was, therefore, right and the appeal must be dismissed.

Counsel: *Arthian Davies, K.C.*, and *Sebag Shaw* for the appellant; as *amicus curiae*, *Winyate-Saul*. The respondent did not appear.

Solicitors: *Allen & Son*; *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

BECKER v. PURCHASE

October 5, 1950.

Quarter Sessions—Costs—Dismissal of appeal—Refusal to award defendant costs—Wrong reason given—Powers of Divisional Court.

CASE STATED by the City of London Quarter Sessions.

At a court of summary jurisdiction at the Mansion House, London, an information was preferred by the prosecutor, Leslie Purchase, charging the defendant, Denis Robert Sydney Becker, with driving a motor vehicle in a manner which was to the danger of the public, contrary to s. 11 (1) of the Road Traffic Act, 1930, the allegation being that he had driven his motor-car on to the pavement. The defendant was convicted and appealed to quarter sessions. At quarter sessions the driver of a van and two pedestrians were cross-examined with a view to establishing that the reason why the defendant drove on to the pavement was that the van was backing towards him and placed him in a difficulty, and they were prepared to accept that suggestion. At the end of the case for the prosecution quarter sessions decided to allow the appeal, but without costs, giving as their reason that they were satisfied that the van had stopped before the defendant drove on the pavement. The court declined to hear the defendant's counsel on the question of costs, and the defendant appealed on that question to the Divisional Court.

Held that, although costs were in the discretion of quarter sessions and although it would have been impossible for the Divisional Court to interfere if costs had merely been refused without any reason being given, yet, as quarter sessions had given a wrong reason for refusing them, the case must be remitted to quarter sessions with the direction that they had not exercised their discretion on any proper material, and that they should not have given a decision on costs without hearing the appellant's evidence on the movements of the van.

Counsel: *Melford Stevenson, K.C.*, and *Medd*, for the defendant; *E. J. P. Cussen* for the prosecution.

Solicitors: *H. B. Nisbet & Co.*; *City of London Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

FENN v. GAZE AND ANOTHER

October 5, 1950

Food and Drugs—Sampling—Milk—Seven churns sent by farmer to place of delivery—Six churns bearing label with farmer's name only—Seventh churn bearing name and address—Samples taken from each churn—Parts of all seven sent to farmer—Validity of procedure—Food and Drugs Act, 1938 (1 *and* 2 *Geo.* 6, *c.* 56), *s.* 70 (2).

CASE STATED by Suffolk justices.

An information was preferred at a court of summary jurisdiction by the appellant, Ivon Walter Fenn, an inspector of food and drugs for the county of Suffolk, charging the respondents, William Mitchell Gaze and another, farmers, under s. 24 (1) (*c*) of the Food and Drugs Act, 1938, with having sold milk to which water had been added. The respondents had sent to the place of delivery of their milk seven churns. Six bore a label with the name only of the respondent, Gaze, while the seventh bore a label with his name and the name of the village where he lived. The sampling officer, having taken samples from all seven churns, sent a one-third part of each of the samples to the respondent, Gaze. Objection was taken on behalf of the respondents that the sampling had been improperly done, on the ground that the sampling officer ought not to have sent to the respondent Gaze the parts of the six samples from the churns which bore Gaze's name and not his address.

By s. 70 (2) of the Food and Drugs Act, 1938: "A person taking a sample of any food while it is in transit, or at the place of delivery to the purchaser, consignee or consumer shall, if he intends to submit it to be analysed by a public analyst, deal with it in the manner provided by the preceding subsection [*i.e.*, by division of the sample into three parts], except that he shall retain the first-mentioned part of the sample [*i.e.*, that deliverable to the seller under s. 70 (1)] unless the name and address of the consignor appear on the container containing the article sampled, in which case he shall forward that part of the sample to the consignor by registered post or otherwise, together with a notice informing that person that he intends to have part of the sample analysed by the public analyst." The justices upheld the objection and dismissed the information. The prosecutor appealed.

Held, that the sampling officer had done something which he was not obliged by the Act to do, but which he was permitted to do, and the sampling was not invalidated thereby. The case, therefore, must be remitted to the justices with an intimation that the sampling had been carried out in accordance with the statute and that they must hear and determine the case.

Counsel: *Boreham*, for the appellant; the respondents did not appear.

Solicitors: *Sherwood & Co.*, for *G. C. Lightfoot*, Ipswich.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

NOTICE

The next court of quarter sessions for the borough of Shrewsbury will be held on Tuesday, November 7, 1950, at the Shirehall, Shrewsbury, at 11 *a.m.*

MISCELLANEOUS INFORMATION

THE MAGISTRATES' ASSOCIATION
ANNUAL GENERAL MEETING

Viscount Templewood on The Country's Crime and Recent Changes

At the Annual General Meeting of the Magistrates' Association, the Rt. Hon. Viscount Templewood, in moving the adoption of the annual report, said that the country was on the eve of a very important chapter in penal reform. The two Acts, the Criminal Justice Act and the Justices of the Peace Act, open out a wide vista for advance in the war against crime. Before discussing the position created by the Criminal Justice Act, 1948, Viscount Templewood spoke on the Justices of the Peace Act, an Act that very directly concerned every individual magistrate. It was now more than a year since the Act was placed on the Statute Book with the unanimous support of both Houses of Parliament. Yet, three of the most important of its provisions have not yet been brought into force. First, the magistrates' courts' committees have not yet been set up. When it was remembered that the re-arrangement of boundaries, the re-organization of justices' clerks, and the courses of instruction for justices depend upon these committees, it will be seen how serious is the effect of delay upon the usefulness of the Act. Secondly, a whole series of important questions affecting magistrates' proceedings depends upon the rule committee prescribed in cl. 15. The rule committee has not yet reported, and he did not know whether a rule committee had ever been formed. Thirdly, no decision had yet been announced as to which of the smaller boroughs will retain their separate courts. In these three respects it was necessary to insist upon the need of bringing these delays to an end and the full Act into immediate operation. He suggested with great deference to the Lord Chancellor, that there must be considerable elasticity in applying his general principles as to the age of magistrates and the necessary number of their attendances upon the bench. We all wanted to see as many young magistrates as possible. The difficulty was to find them. We all wanted to see magistrates take their duties seriously and make regular and frequent attendances on the bench. There was nothing, however, to be gained by insisting upon rigid rules that may bring the efficient work of a bench to an end.

After dealing with the criminal statistics for 1949, and their relation to the Criminal Justice Act, 1948, Viscount Templewood then commented upon the effect of the Criminal Justice Act upon crimes of violence, secondly, its effect upon juvenile delinquency, and thirdly, its effect upon prison treatment.

He began with the question of crimes of violence that caused such widespread anxiety during the passage of the Criminal Justice Act. Many prophecies were made of the disastrous effect upon public order that would be brought about by the abolition of corporal punishment both for the old and the young. Many people, and amongst them some whose opinion carried weight, foretold a disastrous increase in brutal crimes. What had actually happened? There had, over the whole country, been a notable decrease in juvenile delinquency and an insignificant increase as compared with 1948 in the most violent crimes committed by adults. In the London area, by far the greatest police area in the country, offences against the person actually decreased by 7.7 *per cent.* and cases of robbery and assault with intent to rob by 22 *per cent.* Whilst he admitted that it may be too soon to reach any final conclusion upon the course of violent crime, he strongly emphasized the comment of the Commissioner of the Metropolitan Police that the new sentences of corrective training and preventive detention are already providing an effective deterrent.

Upon the Criminal Justice Act in its relation to juvenile delinquency, Viscount Templewood said that, speaking generally, the statistics confirm the view that he had expressed at the annual meeting last year, that juvenile delinquency is receding from the peak year of 1945. In 1949 there was a very substantial fall, amounting in London to 11.9 *per cent.* as compared with 1948. In spite, however, of this marked improvement, the youngest age group, namely, the children from eight to thirteen, shows in London an increase of 2.8 *per cent.* over 1948, and an increase of no less than 53 *per cent.* over that of 1938. These are "the children of the war years," in Sir Harold Scott's words, "and they present an urgent problem that should not be neglected. Too young to be admitted to existing clubs, unable to remain in overcrowded homes, they run wild in the streets and inevitably get into trouble." Sir Harold Scott rightly advocated a great increase of boys' clubs and playing fields for providing an outlet to the misguided energies of these children.

Attendance Centres

From the point of view of the Criminal Justice Act, he said it was essential that the fullest possible experiments should be made with the attendance and detention centres provided in the Act. As the originator of the idea of the attendance centres, he had always regarded them as particularly useful for the very young. After a considerable period of delay, three centres had now been opened. One of them, it should be said to the credit of the metropolitan police, had been started in Peel House at Hendon, where the police are themselves voluntarily and in their own spare time supervising and training the young offenders who are deprived of their Saturday half holiday once a fortnight. It was still too early to judge the results, but the experiment had started in the best possible hands, and that if it was successful, it may prove really effective in reducing the number of young offenders in our great towns.

Viscount Templewood then dealt with the subject of detention centres. These institutions were a necessary part of the new penal system contemplated in the 1948 Act, and it was essential that they should be started without further delay. They provided an alternative punishment for the young that was greatly needed, and it was most regrettable that they are not yet available.

The Present Position of Probation

On the subject of the provisions of the Criminal Justice Act for the improvement of the system of probation, Viscount Templewood said that as things were, a splendid body of probation officers was giving the community invaluable help, particularly in dealing with the young. It was, however, essential that the various provisions of the Act for increasing their efficiency should be put into full operation. It also seemed essential that both magistrates and students of penal questions should be given fuller and more scientific information about the results of probation. Substantially less use is being made of probation today by the various courts of the country than in 1938. What was the reason for this? Why did one city or one county make a much fuller use of probation than another? A careful analysis of these differences and a constructive summing up of the different results was needed.

The effect of the Criminal Justice Act upon prison treatment was next covered by Viscount Templewood. Hitherto, there had been a tendency to regard corrective training as nothing more than a long sentence of ordinary imprisonment. It cannot be said too definitely that the whole conception of corrective training was altogether different from the ordinary conception of imprisonment. The punishment was definitely intended to be a long period of intensive training from two to four years for persistent offenders over the age of twenty-one. An omission was, he thought, made in the Criminal Justice Act by not inserting an upper age limit. His own idea of corrective training, as distinct from the more serious preventive detention, was that it should be a long period of training for persistent offenders between the ages of twenty-one and thirty. He doubted whether it was suited to offenders over the age of thirty. It is preventive detention, a sentence of from four to fourteen years, that should be provided for the older hardened criminal. Whilst its object is primarily the protection of the community from the dangerous criminals who constantly prey upon it, the hope of rehabilitation must never be abandoned. At the present time 458 offenders are sentenced to it. He was by no means satisfied that a proper use is being made of the sentence, yet he directed his main attention on this occasion to corrective training as a potential means of reforming the younger criminal. To obtain the greatest possible benefit, corrective training should only be given in prisons completely allocated to it. It should not be given in a wing or wings of an ordinary prison. At present, there were 1,941 offenders under corrective training in four categories, completely open conditions, as at Sudbury, semi-open conditions, as at Verne, under regional training prison conditions, as at Maidstone, and under full security conditions, as at Chelmsford. He had visited two of these corrective training centres, and had been profoundly impressed by the start that has been made in what he believed to be a penal reform of the very greatest importance. He mentioned two features of the training that have especially impressed him. First, the welfare work that treats the prisoner as an individual, and that helps him to build up again his broken family life and rehabilitate himself in the world when he leaves prison. One governor whom he had seen has an intimate knowledge of every individual prisoner in his charge. The prison staffs are giving invaluable help, whilst the probation officers have been entrusted with the very important task of keeping in touch with the offender both in prison, and out of prison when he leaves it. This was a new and heavy duty to place upon the shoulders of the probation officers, yet he was convinced that no body of men and women could be better qualified to undertake it, and he confidently wished them every success in this new chapter of their responsible duties.

The second feature that had struck Viscount Templewood was the

new conception of prison work. Every effort was being made to interest the individual prisoner, to give him a job that was worth while, and to make his work an essential part of his training. At present, there was an urgent need for more machinery and more opportunity for skilled work. The all-important fact, however, is that the definite intention is to have as much skilled work as possible, and to stimulate the prisoner's interest in what he was doing. The Governor of Maidstone Prison recently told him (Viscount Templewood) that his chief problem was to create or recreate some human interest in the persistent offender's mind. He greatly hoped that this experiment would revolutionize our antiquated conception of prison work, and that we should live to see prisoners earning good wages and paying the greater part of them to the State, their families, and the victims that they had wronged.

Corrective training has now been in use for rather more than a year. If it was too soon to judge of its final results, it was already possible to claim that, provided it was regarded as a punishment that is very different from ordinary imprisonment, and that it was applied to the persistent offenders who were likely to benefit from it, it was as great a change in our penal methods as the introduction of borstal treatment half a century ago. It might well mark the beginning of a really successful advance in the continuous war against crime.

THEORIES OF PUNISHMENT

The Rt. Hon. Lord Oaksey, in an address to the Association, said that he was afraid that his views were not altogether in accord with the policy which the Home Office had followed for a good many years but that seemed to him no reason why he should allow himself to be deflected from what he believed to be good sense.

The questions which he invited the Association to think about were:

1. What was the principal purpose of punishment? Was it to protect society or to reform prisoners?
2. Was too much power over sentences confided to prison authorities and too little to magistrates and judges?
3. Were there sufficient categories of punishment?
4. Was there an adequate form of punishment for serious crimes of violence?

Deciding upon the appropriate punishment was one of the most important if not the most important function of a magistrate and it was important to remember that a magistrate's position is quite different from that of a prison governor or a prison commissioner. The magistrate judges the accused on his conduct as a free man, the prison governor and the prison commissioner on his conduct as a prisoner.

The magistrate cannot follow the careers in prison of the men he had tried nor can the prison authorities really know, as the magistrate knows, the true nature and details of the actual offence the prisoner has committed. A man who has committed the most terrible crime may appear to the prison authorities a most harmless individual. But even if the prison authorities were in the same position as the magistrate to decide upon the appropriate punishment the fact remains that Parliament had entrusted that duty to the magistrates.

It was important to remember that this wide discretion has been entrusted to magistrates and the Court of Criminal Appeal by Parliament and they must exercise their discretion according to the views they hold of the objects of punishment. Were they bound to have regard solely or even principally to the interests of the prisoner and his reform as some so called prison reformers seem to think? Prison reform was not the same thing as reform of prisoners and reform of prisoners was only of importance in the theory of punishment, as it seemed to him, in so far as it makes it less likely that they will offend again. Their reform apart from that is no concern of the magistrate. The object of punishment, he submitted, was to protect society and to prevent private vengeance. If sentences became too lenient or prisons too comfortable and discipline in prisons too mild they would neither protect society nor prevent private vengeance. Statistics, it was said, can be made to prove anything and one frequently heard of the alleged success of leniency in the case of first offenders and others but it must be remembered that only, he thought, between 30 *per cent.* or 40 *per cent.* of criminals are detected, a fact which has an obvious bearing upon such statistics. In spite of the prevalent idea that all men are equal the fact is that men of the underworld are very different from the average run of mankind. Imprisonment for one night to an educated man is probably more terrible than imprisonment for a year or more to an uneducated criminal. But even to the ordinary criminal classes the year of prison, however leniently administered, might be a considerable deterrent if detection were certain, but it was not. If prison was comfortable and there was a good chance of not being detected it became a very slight deterrent. It appeared to him that some forms of imprisonment should be so harsh as to strike fear into the hearts of the most hardened. He was not suggesting that there should only be one form of imprisonment; on the contrary, he thought there should be sufficient grades of punishment so as to enable the judge, who alone was in a position to know what the crime deserves in all the circumstances, to decide upon the appropriate punishment both in time and in quality. It should not be, in his opinion, for the prison commissioners to decide what form of punishment the criminal should undergo. As he had said, they do not and cannot know the complete facts in the same way that the judge does. The judge has read the depositions, has heard the evidence, has heard everything that the prisoner or his friends desire to say on his behalf and also what the police had to say about him and every judge will confirm the fairness of the police in speaking of a man's character before sentence. The prison authorities saw the man as a caged bird and have neither time nor opportunity to hear or read the facts as they were brought out in court.

The only categories of punishment are now imprisonment, corrective training and preventive detention. Did anyone really believe that these forms of punishment are appropriate for men who beat old men and women within an inch of their lives? In cases of the utmost savagery all a judge can do is to award a long sentence of imprisonment which is, he submitted, often utterly inappropriate and much more cruel than a shorter sentence on really severe conditions. Again why was it that the severest forms of punishment were reserved for the protection of prison officers? If flogging was not a deterrent why permit it in cases of offences against prison officers? The reason why it is retained was, he imagined, because prison officers are in close touch with the prisoners themselves and know what the worst of them are like and prison officers cannot be recruited unless these powers are retained. Dietary punishment too is only retained for the protection of prison officers. Why should prison officers be protected by forms of punishment which are not available for the protection of the public. To him it did not make sense. The reason is, it seemed to him, that the members of the public who have the misfortune to be beaten up are organized in no trade union and cannot make their views felt. But if the feelings of Parliament are so tender that they cannot authorize corporal punishment that is no reason why they should only have three forms of punishment and none of them really severe. Prisoners must vary infinitely just as their crimes vary but the only way in which the judge can vary the sentence was apart from these three forms of imprisonment, in point of duration and what was the good of spending public money in keeping men for long terms in prison who cannot be reformed except by what they dread. No doubt they dread a very long sentence to some extent, but at what a cost does the country achieve this amount of deterrence and when it was remembered the small percentage of offenders who are caught, even a long sentence with interesting work, good food and warmth has little terror.

Lord Oaksey thought probation was an admirable system and is being administered by a devoted body of officers, women and men. He was certain that the influence of such officers and also of prison visitors can do a great deal of good. He had often been impressed when visiting prisons of the value of visitors who can act as unofficial links between the prisoner and his wife and family during his imprisonment: it had seemed to him that nearly every prisoner had need of some one person to act as such a link. He did not, however, advocate the repetition of probation unless in very exceptional cases. A probation sentence was apt to be considered sometimes as almost an acquittal and it required a probation officer of great strength of character to impress upon the criminal the seriousness of his position. It is important that magistrates should strengthen the hands of probation officers by imposing a real sentence for both offences when a criminal is brought up for breach of a probation order. Sir Leo Page, whose experience and interest in the subject was so well known, had suggested to him that the probation system might be strengthened by the introduction of the suspended sentence which is a form of sentence in force in France and in other countries. A suspended sentence was, as the words suggest, that a real specific sentence is decided upon but is suspended like a sword and will only fall if the criminal commits another offence within a certain period, the suggested period being three years. If the criminal does so offend the court before whom he is brought must impose the sentence suspended together with any other sentence it thinks fit for the second offence.

It seemed to him that such a system would bring home to the offender the seriousness of his position and would really make him understand that he had not heard the last of his offence unless he went straight for three years. It would also strengthen the hand of the court before whom the offender was brought on the second occasion, a most necessary strengthening for it is always difficult for a judge properly to assess the former offence and not to treat the two offences as one. He suggested that if magistrates are in agreement with Sir Leo Page's view and his own it might be worth while to set up a committee to consider the advisability of recommending such a system.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 71.

ATTEMPTED EXPORTATION OF CURRENCY

A man and his wife appeared at Lewes magistrates' court on August 15, 1950, charged jointly with being concerned in a fraudulent attempt to export fifty-one £1 Bank of England notes, the exportation of which is prohibited by s. 22 of the Exchange Control Act, 1947, contrary to s. 186 of the Customs Laws Consolidation Act, 1876.

The male defendant was also charged with being knowingly concerned in carrying certain prohibited goods, to wit, £32 10s. in Bank of England notes, with intent to evade such prohibition contrary to the same section.

For the prosecution, it was stated that the male defendant, when about to travel from Newhaven to France, declared £8 and his wife £6. The male defendant was searched and other money was found in his possession.

The female defendant was about to be searched when she produced £50 from a pocket sewn into her vest. The male defendant said: "I thought I was being clever and tried to get away with it." The female defendant said: "We were going to France to have a good time."

Upon the joint charge the male defendant was fined £20 and ordered to pay £5 5s. costs and his wife was fined £20. Upon the second charge the male defendant was fined £10.

COMMENT

Mr. A. H. Chandler, clerk to the Lewes justices, to whom the writer is greatly indebted for information in regard to this case, states that currency cases of this nature are fairly common to his bench, as Newhaven is within the Lewes division.

It is interesting to note the manner in which the penalties for this type of customs offence have been stiffened since the Customs Laws Consolidation Act was enacted in 1876. Section 186 of that Act provides for a penalty upon conviction for a breach of the section of £100 or treble the value of the goods including the duty payable thereon.

Section 15 of the Finance Act, 1935, provided that where a person was convicted of an offence under s. 186 of the Act of 1876, the court might, if it thought fit, in lieu of ordering the offender to pay a penalty, order him to be imprisoned for a term not exceeding two years.

Section 12 of the Finance Act, 1943, provided that, in addition to imposing a sentence of two years' imprisonment, the offender might be ordered to pay the penalty prescribed by s. 186 of the Act of 1876, and subs. (4) of s. 12 laid down the maximum period of imprisonment that might be imposed in respect of the non-payment of a penalty and fixed periods varying from six months where the penalty does not exceed £100, to twelve months where it exceeds £250.

It will be remembered that guidance was given to the Lewes justices by the Divisional Court as to the view they should take of offences of this nature, in *Pickett* v. *Feay* (1949) 113 J.P. 528. In that case, an elderly woman of small means tried unsuccessfully to smuggle £85 out of the country as it was "a matter of life and death" to her that she should take the money to her son in Italy who had no work and was in debt.

The justices being satisfied that the defendant was a woman of good character and having regard to the extenuating circumstances, dismissed the information under s. 1 of the Probation of Offenders Act, 1907, and the officer of Customs and Excise appealed.

Lord Goddard, C.J., in delivering the judgment of the court, stated that it was extremely difficult to imagine any circumstances which would justify a court in treating an offence under the Exchange Control Act, 1947, as a trivial offence and that, as the defendant knew that what she was trying to do was wrong, the justices were not justified in dealing with the case as they had.

The case was remitted to the justices with a direction that a penalty must be inflicted and that it must not be a nominal penalty.

This decision exemplifies the difficulty which is often encountered in knowing where to draw the line in using "dismissal", Probation of Offenders Act (now "discharge", Criminal Justice Act). It is not easy to see why a distinction should be drawn between currency offences involving comparatively small amounts and offences such as false pretences, fraudulent conversion, etc., in which "discharge" is used, not infrequently, by courts both high and low.

R.L.H.

No. 72.

THE MISPLACED ENTHUSIASM OF WELSH REPUBLICANS

A twenty-five year old university lecturer, his twenty-seven year old wife and a thirty-four year old clerk, were charged at Aberdare magistrates' court on July 26, with using insulting behaviour whereby a breach of the peace was likely to be occasioned upon a certain date contrary to s. 5 of the Public Order Act, 1936.

The defendants were also summoned for obstructing the footway contrary to s. 72 of the Highway Act, 1835, and the latter summonses were dismissed.

For the prosecution evidence was given that an open air meeting of the Welsh Republican Movement held at Aberdare was attended by about 150 people.

The thirty-four year old clerk poured liquid over a Union Jack which was then set on fire. The burning of the flag was followed by angry and vulgar expressions from the crowd which were considered likely to lead to a breach of the peace and a police sergeant stated that he heard people shout "The . . . ought to be burned themselves."

One defendant told the court that the Union Jack meant nothing more to him than a symbol of oppression of the Welsh people by another nation. A woman who shouted "Long live the Welsh Republicans" was ejected from the court followed by other Welsh Republicans. Each defendant was fined the sum of £5 and ordered to pay 13s. costs. Notice of appeal was served by each defendant and the hearing before the Appeals Committee was fixed for October 5, 1950, but on October 2, each of the defendants gave notice of the abandonment of the appeal and paid the fines and costs which had been imposed.

COMMENT

Section 5 of the Act of 1936 provides that any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, shall be guilty of an offence, and public place is defined in s. 9 (1) of the Act as meaning any highway, public park, or garden . . . road, lane, footway, square . . . and includes any open space to which, for the time being, the public has access.

The maximum penalty on conviction of an offence under this section is three months' imprisonment and a fine of £50.

It will be recalled that the wide words of this section gave rise last year to an amusing case, *Wilson* v. *Skeock* (1949) 113 J.P. 294.

The parties lived in a block of flats with a yard at the back to which both had access and a wall separated the yard from a lane to which the public had access. On two occasions Mr. Wilson, standing in the yard, used abusive language to Jane Skeock who was in her flat and proceedings were instituted by the lady against Mr. Wilson alleging a contravention of this section. It was held by the Divisonal Court that the Act of 1936 having been passed for a very different purpose than that of dealing with two neighbours using abusive language the one to the other, it would be wrong to hold that the section created a new offence as between neighbours merely engaged in abusing each other and Lord Goddard, C.J., pointed out that the Justices Act, 1360, was the appropriate Act to call in aid in such circumstances.

The Durham county justices had bound over Mr. Wilson for a term of two years and this action of the justices was endorsed by the Divisonal Court because there is an inherent power in justices which has been recognized for at least 400 years to take action in the shape of what Lord Coke and Sir William Blackstone called "preventive justice."

In the result therefore it was held that the justices had reached the right decision although they had started on the wrong road, and the appeal of Mr. Wilson was dismissed.

(The writer is very much indebted to Mr. William G. Protheroe, clerk to the justices, Merthyr Tydfil, for information in regard to this case.)

R.L.H.

PENALTIES

Ealing—July, 1950—preparing for reward an agreement under hand, which from its contents should have been under seal, relating to real property—fined £25. To pay £21 costs. Defendant an estate agent.

Leeds Quarter Sessions—September, 1950—shop lifting (two defendants)—first defendant three years' imprisonment; second defendant nine months' imprisonment. First defendant a sixty year old dealer, second defendant his forty-nine year old wife, described by prosecution as the brains behind a gang of six persons who were described as having descended on a Leeds store "like a swarm of locusts." First defendant had seven previous convictions and had twice tried to bribe the police. The defendants sat in their car while members of the gang emptied goods into it. In a short space of time the gang had obtained £157 worth of goods.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

FALSE STATEMENTS TO OBTAIN REDUCTION IN PAYMENTS

Practical Point No. 2 in your issue dated September 23, 1950, raises the question as to whether an offence is committed by a parent who, in completing a questionnaire issued by the local education authority preparatory to consideration being given to the necessity of providing the parent's child with clothing under s. 5 of the Education (Miscellaneous) Provisions Act, 1948, makes a false representation as to the financial circumstances of his family with the object of avoiding having to pay the whole or part of the sum of money charged by the local education authority in respect of the provision of the clothing.

It is possible that, in the case in point, an offence was committed under s. 1 (1) of the Prevention of Corruption Act, 1906, which provides that " . . . if any person knowingly gives to any agent . . . any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of misdemeanour."

An intention to corrupt the agent is not an essential ingredient in this offence and, although the section is primarily concerned with corrupt transactions with agents, there would appear to be no reason, beyond the suggestion that " document " should be construed *ejusdem generis* with " receipt " and " account," why a transaction of the nature described in the Practical Point should not fall within the provisions of the section.

No prosecution could, of course, be instituted without the consent of the Attorney-General or Solicitor-General.

Local authorities operate many schemes and provide many services which are available only to persons in poor financial circumstances or for which differential charges are made according to the incomes of the various recipients, and the problem of the " false statement " could be a very big one.

A number of local authorities, among them the county boroughs of Rochdale and Huddersfield, have, however, solved the problem by obtaining local Act provisions that " if any person for the purpose of obtaining for himself or any other person a rebate in the rent of any house belonging to the Corporation or a reduction in the amount of any other payment due to the Corporation :

(a) Knowingly makes to the Corporation or any of their employees a false statement or false representation relating to his or that other person's ability to pay the rent or make the payment ; or

(b) Produces or furnishes or knowingly allows to be produced or furnished to the Corporation or any of their employees any document or information relating as aforesaid which he knows to be false in a material particular ;

He shall be liable on summary conviction to a fine not exceeding fifty pounds to or imprisonment for a term not exceeding four months or to both such fine and imprisonment."

Yours faithfully,
J. A. CÆSAR,
Deputy Town Clerk.

Town Hall,
Rochdale.

[We are interested in the ingenious argument put forward by our correspondent that an offence, in the circumstances in question, is committed under s. 1 (1) of the Prevention of Corruption Act, 1906.

Having regard to the scope and purpose of that Act and to the general maxim that a criminal statute must be construed strictly we do not think that the provisions of s. 1 (1) can properly be stretched so as to make that section applicable to this case, which has no connexion whatever with any attempt by anyone to offer or to accept any gift or bribe.

We think that the provisions of the local Act referred to might well be incorporated in a public statute.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

HOUSING BOUNDARIES

After reading your comments in " Notes of the Week " in your issue of September 9, I feel that you will be interested to learn of the joint housing scheme which has recently been the subject of agreement between my council and the neighbouring urban district council of Church, with the approval of the Ministry of Health.

In brief, the two authorities have agreed to act in combination for the purpose of developing as a housing estate an area of land, some seventeen acres in extent, situate wholly within the district of Church, adjacent to the borough boundary. It is proposed to erect on this site 180 non-traditional type houses, 120 of which are for the corporation and the remaining sixty for the Church council.

This scheme has arisen out of the now acute shortage of suitable building land within the borough and it will be of considerable benefit to my council in so far as they will be able to provide a further 120 houses which could not otherwise have been built. On the other hand the Church council—which is an authority with a comparatively small population, and only modest resources—by co-operating in the development of suitable building land within their area will benefit by the erection of sixty houses much more quickly than would most probably have been the case had they pursued an independent housing programme on a part only of this particular site.

It has been agreed with the Church council that the corporation should undertake the whole of the work involved in this project, as agents acting on behalf of both authorities, so that, so far as the contractors are concerned, the land is to be developed as a complete estate of 180 houses for the corporation as the sole interested party.

The rights and obligations of the two authorities as between themselves are dealt with in a separate agreement between the corporation and the council which provides *inter alia* for the following matters :

(1) That the total cost of the work will be borne, in the proportion of two-thirds/one-third, by Accrington and Church, respectively, irrespective of the differences in the types and cost of the houses erected and the cost of the roads, sewers, etc., constructed on the respective parts of the estate owned by each authority.

(2) For the payment to the corporation by the Church council of their proportion of the sums which become due to the contractors from time to time.

(3) That in general, the houses as they are erected will be tenanted by persons selected by the authority to whom the site belongs. Since, however, the site is to be developed as one complete estate, it has been necessary to provide for some flexibility in the method of allocation, so that one authority should not be prejudiced if the practical requirements of the situation result in building being commenced wholly on the land owned by the other authority.

No precise arrangements have yet been made in regard to the eventual management of the estate when completed, but it is not anticipated that there will be any difficulty in reaching an amicable understanding on this point.

The negotiations between the corporation and the Church council with regard to this scheme have been conducted throughout in a most friendly and co-operative spirit and the regional office of the Ministry of Health have given a great deal of assistance by their encouraging reception of the proposal.

It is understood that this joint scheme is the first of its kind in the country and consequently both councils regard with some pride their share therein, which is evidence of the fact that co-operation between local authorities to their mutual benefit can still be achieved by those authorities which, as you so well put it, are fortunate enough as to possess " adequate initiative and energy of execution " amongst their members.

Yours faithfully,
J. GARTSIDE,
Town Clerk.

Town Clerk's Office,
Accrington.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

OUR LAY MAGISTRACY

Although I endorse all that your correspondent, Mr. L. G. H. Horton-Smith, has to say in praise of the lay magistracy, I am surprised to read in your issue of September 30, his letter in which he illustrates the earnestness of lay magistrates by the two examples he gave in such letter.

The magistrates' clerk is the proper person to advise the magistrates on law and procedure, and for the lady magistrate " often in the course of a case " to ring up some other person for advice as to the court's proper course seems, to me, to say the least, hardly correct.

Yours faithfully,
J. A. PITTAWAY.

Magistrates' Clerk's Office,
25, St. Andrew's Street, Droitwich.

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

The first adjournment debate in the Commons after the autumn re-assembly was on the operation of the Justices of the Peace Act.

Mr. H. Hynd (Accrington), who initiated the debate, recalled that the Act received the Royal Assent on December 16, last, and on March 1, this year, an Order was issued bringing into operation from June 1, twenty-five sections of the Act. By the same Order, s. 13 was brought into operation as from January 1, next. That left twenty sections without any date for their operation, and he asked for information as to when they would be operated.

The Bill had been a non-contentious one and it had raised great hopes amongst the thousands of justices of the peace throughout the country, hopes which had been somewhat dashed by the long delay in putting the Act completely into operation.

He went on to point out that unless and until the magistrates' courts' committees were established under s. 16 much of the purpose of the Act would remain unfulfilled because it was those committees that had the duty, amongst other things, of arranging courses of instruction for new justices. The operation of many of the sections were inter-linked, and in many districts there was a feeling of frustration and even embarrassment at the hiatus between the dying of the standing joint committees and the setting-up of the magistrates' courts committees.

The Under-Secretary of State for the Home Department, Mr. G. de Freitas, who replied, dealt first with s. 15 because, he said, the reason no date had been fixed for that section was entirely different from the reason no date had been set for the other provisions of the Act. By s. 15 the Lord Chancellor had power to appoint a rule committee to advise him on making rules for regulating and prescribing the procedure and practice in magistrates' courts and by justices' clerks. They intended to consolidate the Summary Jurisdiction Acts and they were therefore very carefully reviewing the powers and procedures of magistrates' courts.

The provisions of the Summary Jurisdiction Acts on matters of procedure were interwoven with substantive provisions. Until they had got a good deal further in separating those procedural provisions from the substantive provisions, nothing would be gained by setting up a Rule Committee under that provision.

It was true with respect to the rules under s. 13, that the existence of a Rule Committee would have been an advantage, but in general the disadvantages outweighed the advantages.

Regarding ss. 16, 17, 18 and so on, the Home Secretary had said that the provisions of the Act relating to the setting-up of magistrates' courts committees could not be introduced in isolation from the financial provisions of the Act and, because of the economic situation and the need for strict economy, the Home Secretary could not say when it would be possible to bring those provisions into operation. That did not mean that the Government had decided to postpone the operation of the Act. It meant that no decision had been made to bring the provisions of the Act into force.

He went on to suggest that the best date for bringing into force s. 10 would be April 1, 1951, and that the best date for the magistrates' courts committees to take over would be April 1, 1952, as that would give time for the necessary reviews to be undertaken. He could not give an undertaking that those dates would be met, but he would see that the powerful arguments in favour of early operation were carefully considered.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, October 17

ALLOTMENTS BILL, read 3a.

HOUSE OF COMMONS

Tuesday, October 17

FOOD AND DRUGS (MILK, DAIRIES AND ARTIFICIAL CREAM) BILL (LORDS), read 2a.

DISEASES OF ANIMALS BILL (LORDS), read 2a.

Thursday, October 19

FOOD AND DRUGS (MILK, DAIRIES AND ARTIFICIAL CREAM) BILL (LORDS), read 3a.

DISEASES OF ANIMALS BILL (LORDS), read 3a.

Friday, October 20

PUBLIC UTILITIES STREET WORKS BILL (LORDS), read 3a.

NEW COMMISSIONS

COUNTY OF ANGLESEY

Richard Davies, Erw, Valley.
Mrs. Mary Forcer Evans, Clai, Llangefni.
Edward James Hughes, Gwylfa, Beaumaris.
Hugh Jones, 21, Well Street, Holyhead.
Mrs. Mary Jones, Tynrneol, Amlwch.
Owen Richard Ellis Jones, Cafnan, Cemaes Bay.
Dr. William Hywel Jones, Cynfor, Cemaes Bay.
William Shubert Jones, Llwyn Onn, Llanfairpwll.
John Lewis, Tregarne, Llanfairpwll.
Sir Arundell Thomas Clifton Neave, Bart., Llys Dulas, Dulas.
Robert Roberts, 6, Lligwy Street, Holyhead.
Miss Margaret Venmore Thomas, Plas Medd, Llanerchymedd.
Mrs. Elizabeth Eleanor Thornton-Jones, Avallon, Llandegfan.
Owen Lloyd Williams, Bodawen Park Road, Holyhead.
Mrs. Mabel Wilson, 14, Boston Street, Holyhead.

WEYMOUTH BOROUGH

Alfred Percy Burt, 300, Dorchester Road, Weymouth.
Miss Kate Chapman, 283, Dorchester Road, Weymouth.
Hugh Waydelin Crickmay, 81, Wyke Road, Weymouth.
Richard Albert Crumbleholme, 24, Melcombe Avenue, Weymouth.
Dr. Anne Gordon Innes Gallagher, 45, Spa Road, Weymouth.
Leslie William King, 3, Augusta Place, Weymouth.
Donald MacDonald, Watermeadow, Sutton Poyntz, Weymouth.
Wilfred Ewart Ward, 753, Dorchester Road, Weymouth.

WILTS COUNTY

Hugh Trefusis Brassey, Manor House, Little Somerford, Chippenham, Wilts.
Dennis Sydney Morse, 33, High Street, Malmsbury, Wilts.

LAMENT

Had my marriage been sensible, had I been wise,
I wouldn't be now just a Case to Advise.

J.P.C.

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PRACTICAL POINTS

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1.—Cemetery—*Consecrated ground—Erection of public convenience and bus shelter thereon.*

In 1878 a portion of cemetery ground was consecrated by the bishop of the diocese for Christian burial. The cemetery is managed by a joint committee consisting of representatives of the town council and representatives of a neighbouring parish council.

For many years there stood in the middle of the road junction at the north end of the cemetery a cast iron public convenience, which was erected by the corporation, but in 1942 owing to its having fallen into disrepair and become a danger to traffic the convenience was removed.

With the full approval of the joint committee the corporation has resolved to submit a petition to the consistory court of the diocese for a faculty authorizing the erection of a new public convenience and bus shelter on a piece of the consecrated ground containing an area of 150 square yards fronting on to the main road.

The enclosed plan illustrates the proposals.

The registrar and bishop's secretary has informed the town clerk that on the hearing of the petition "the chancellor will have to be convinced that he has jurisdiction to grant the faculty asked for," and the corporation should be prepared to argue this point.

Can you please inform the town clerk of any statute(s) or cases which would assist in convincing the chancellor as to his jurisdiction.

ACRE.

Answer.

The utility as precedents of many cases given in books on ecclesiastical law is weakened by their being decisions of chancellors, not reviewed by higher authority. It is clear that a faculty cannot be granted to erect a building on a disused burial ground: *St. Nicholas Acons* v. *L.C.C.* (1928) 92 J.P. 185. Two years earlier the chancellor of London, in *Bermondsey M.B.C.* v. *Mortimer*, [1926] P.87 a case which is unfortunately given wrongly in one of the text books, refused a faculty to erect a urinal on a disused burial ground, but allowed the erection of some wooden structures which he felt able to say were not buildings. In each case the emphasis laid on the statutory prohibition in the Disused Burial Grounds Act, 1884, suggests that where a burial ground has not been disused there is jurisdiction to grant a faculty, even for the erection of a building on consecrated ground. The decision of the Court of Arches in *re Bideford, ex parte Rector of Bideford, etc.* (1900) 64 J.P. 743, seems to show that the chancellor can do so, if the rights of burial will not be reduced, and therefore that his doing so is a matter of discretion. In that case the Dean of Arches insisted that a precise record be made of the encroachment, which was for the construction of a footpath, so that if necessary the ground could afterwards be used for burial. The encroachment proposed in the case before us is more serious, in that a building of more or less permanent type is contemplated. The position might be eased if the council and the joint committee could arrange for an equivalent area to be added to the consecrated portion of the ground. From the plan it looks as if a slight alteration in the line dividing the consecrated and unconsecrated portions, by moving the northern end of that line a few feet to the westward, would give the Church of England as much extra space as the proposed new building will occupy.

2.—Children and Young Persons—*Joint offence with adults—Adults committed for trial—Power of summary court which is not a juvenile court to try the juveniles—Children and Young Persons Act*, 1933, *s.* 46 (1) (*a*).

In this court recently six persons were jointly charged with breaking and entering a garage. The ages were as follows: A eighteen, B seventeen, C seventeen, D fifteen, E fourteen, F twelve.

The case was heard by the examining magistrates who committed A, B, C, D and E for trial at the next quarter sessions. The justices, who constituted a court of summary jurisdiction, then considered the case of F and by virtue of the amendment to s. 10 of the Summary Jurisdiction Act, 1879, by sch. 3 of the Children and Young Persons Act, 1933, tried the case, and after a finding of guilt, remitted the child for sentence to the juvenile court by virtue of s. 56 of the Children and Young Persons Act, 1933.

The justices would have wished to have dealt summarily with D and E in the same manner but were doubtful if they had power to do so in so far as they were charged with an adult as sch. 3 to the Children and Young Persons Act limits the amendment to s. 10 of the Summary Jurisdiction Act, 1879, to children.

Would you please advise if this procedure was correct or if the justices had power to deal summarily with D and E while still committing A, B and C for trial.

J. LEX.

Answer.

The matter is governed by the Children and Young Persons Act, 1933, s. 46 (1) (*a*). This is a charge made jointly against three juveniles and three adults, and it must be taken before and heard by a court of summary jurisdiction (other than a juvenile court. That summary court has power by the Summary Jurisdiction Act, 1879 (s. 11 in the case of young persons, and s. 10 as amended in the third schedule to the 1933 Act in the case of children) to deal summarily with the juveniles provided that the young persons consent to be so tried.

It is for the court to decide whether it is proper to try the defendants separately in this way or whether it is necessary in the interests of justice to commit the young persons, or the young persons and the child, for trial with the adults. Section 11 is worded differently from s. 10, but we think that the fact that it is a joint charge is one of the circumstances of the case which the court must consider before deciding whether to offer the young persons the option of summary trial.

3.—Magistrates—*Dogs Act*, 1906, *s.* 6—*Unburied carcase—More than one carcase—Maximum penalty.*

By s. 6 of the Dogs Act, 1906, any person who shall knowingly and without reasonable excuse permit the carcase of any head of cattle belonging to him to remain unburied in a field, etc., shall be liable on conviction to a fine not exceeding £2.

A is served with one summons for permitting twelve carcases of sheep to remain unburied. Will you please advise if he can be fined up to £24 or £2 only.

J. LINKS.

Answer.

We assume that in this case there was only one information, and that this is not a case in which a single summons was issued on a number of informations under the Criminal Justice Act, 1948, s. 32. We think the maximum penalty is £2.

4.—Magistrates—*Unrepresented defendant—Evidence or unsworn statement—Explaining the difference to him—Form of words to be used.*

It has been the practice in my court, as I understand it is in many other courts, in the case of a defendant who is not legally represented in cases being dealt with summarily to explain to him before he enters upon his defence that he has the right to give evidence himself on oath or that he can merely make a statement to the bench not on oath and in my court it has been usual to add that if he does give evidence on oath he is liable to be cross-examined. My chairman suggests that it is preferable to enlarge upon this—rather as is done under court martial procedure—and to explain to the defendant that evidence on oath is likely to carry more weight with the bench than a simple statement. I appreciate the necessity of the defendant's fully understanding the position but I do feel that to address him in the way suggested may almost be tantamount to suggesting that the bench are not likely to pay much regard to any unsworn statement as to the facts which the defendant may make.

I should appreciate your observations. Can you please suggest a simple and concise form of explanation which could be used?

JIV.

Answer.

We hesitate to suggest any set form of words for universal use because a form of words which makes a point clear to one defendant may fail to do so to another of a different standard of education and intelligence. The duty of the court is to try, without in any way putting pressure on a defendant to induce him to give evidence, to make it clear to him (having regard to his apparent intelligence and power of understanding) what his position is. It is, we think, quite proper to point out that a story told on oath which can be tested by cross-examination and questions from the bench may well carry greater weight than an unsworn statement which cannot be so tested. We think that a defendant is entitled to know this, and with this knowledge he should be in a position to decide which choice he will make.

5.—Poor Prisoners' Defence—*Several defendants—One indictment, one solicitor and one counsel—How many defence certificates and what fees?*

If two or more men are charged jointly with an offence and committed for trial to either quarter sessions or assizes and these are indicated on one indictment, how many defence certificates may properly be granted by the examining magistrates, assuming:

1. All accused are eligible for such certificate.
2. The same solicitor acts for all accused.
3. The same counsel is briefed for all accused.

If more than one certificate is allowable, what is the proper scale of costs to be allowed? J. GAR.

Answer.

We think that a separate defence certificate should be granted to each person committed for trial, and that there should be separate fees in respect of each certificate on the scales laid down in rr. 1 and 2 of the Costs of Poor Prisoners' Defence Regulations, 1930.

We answered a similar question at 113 J.P.N. 524.

6.—Public Health Act, 1936—*Private sewers—Not "required" by local authority to be constructed—Maintenance and cleansing.*

Section 23 of the Public Health Act, 1936, makes it a duty of the local authority to maintain, cleanse and empty all public sewers. Section 24 enables the authority to recover the cost of maintenance of certain public sewers (indicated in subs. (4) i from the owners of premises served thereby. By s. 38 the local authority might, when plans are submitted for new buildings, require them to be drained in combination by means of a private sewer. The expenses of maintaining and repairing these private sewers are to be borne by the owners concerned. In 1938 the council approved plans of houses to be drained to the public sewer by means of a private sewer. The council did not make the requirement referred to in s. 38 that the buildings should be so drained in combination by means of a private sewer. Would you please advise (*a*) as to whose duty it is to repair, and maintain such a private sewer, (*b*) ditto cleanse, (*c*) if owners responsible, the section empowering the local authority to require such work.

Reference is made to P.P. 10 at 108 J.P.N. 22, as to work of rodding a s. 24 (4) public sewer being regarded as "cleansing" and the cost as not recoverable; and P.P. 10, 103 J.P.N. 646, regarding removal of obstruction from a public sewer not being "maintenance" for purposes of recovery from owners. No reference can be found to the maintenance and cleansing of a private sewer and particularly to a private sewer which was not "required" by the local authority. A.E.B.

Answer.

Since the council did not use their power under s. 38 (1), the remainder of that section, particularly subs. (2), need not be further considered. Sections 23 and 24 do not apply to private sewers. The duty of repairing, maintaining, and/or cleansing, does not rest upon the council: if nuisance arises, or if s. 39 can be brought into play, the liability is determined thereunder. There may be great difficulty in enforcing either s. 39 or the nuisance sections; s. 39 speaks of a "sewer provided for the building": the question arises, which building? *See Lumley's* note (*k*) on the section. Section 93 may be a better weapon, regarding the sewer as "the premises," if the ownership of the sewer can be established. Perhaps P.P. 10 at 109 J.P.N. 23, and our fourth answer to P.P. 5 at 111 J.P.N. 246, though not directly in point, may help you.

7.—Public Health Act, 1936—*Purchase by agreement—Freehold bought but leasehold outstanding—Sewer—Ancillary works.*

The council has bought by agreement with the owner 0.009 acres of land in the grounds of large country house as a site for a sewage pumping station for the purposes of s. 15 of the Public Health Act, 1936. The house and grounds are subject to a twenty-one year lease completed in 1934. There is a dispute between the owner and the lessee regarding certain repairs to the property, and the latter has refused the council possession of the land they have bought unless they will take steps to compel the owner to do the repairs. What action, if any, can the council take to secure possession of the land? The pumping station is to be constructed on the public sewer to lift the contents of the sewer to a level from which they will gravitate to the sewage disposal works. Can it be regarded as part of the public sewer which can be constructed on giving reasonable notice in accordance with s. 15 (1) (i) (*b*) of the Public Health Act, 1936. A.J.H.P.

Answer.

This seems doubtful: *King's College, Cambridge, v. Uxbridge R.D.C.* (1901) 85 L.T. 303. It is not clear why the council, when buying the freehold, did not buy also the balance of the leasehold interest in this small piece of land. The owner could sell only what he owned, namely a freehold in reversion. The lessee's attitude as described is illogical and may be capricious, but buying out the five year balance of the term seems the only course.

8.—Town and Country Planning Act, 1947—*Garden of derelict cottage—Serious injury to amenity.*

Section 33 of the Town and Country Planning Act, 1947, relates to the serious injury of amenity by the condition of any garden, vacant site or other open land in the area of a local planning authority. In this borough on land enclosed by a fence at least four feet high, with a frontage to a main road, stands an old brick building which many years ago was used as a cottage. Other buildings once stood on this land and therefore the whole cannot now be regarded as the garden of the previous cottage. It will be appreciated that the land has now become overgrown with weeds and is very unsightly when one looks over the fence. In view of the above facts do you consider that any action can be taken under s. 33 of the Town and Country Planning Act, 1947, additional to any action which the council may take with regard to the building under s. 58 of the Public Health Act, 1936? ASLE.

Answer.

To say that it is very unsightly, when one looks over a fence which is at least four feet high, falls short of saying that the amenity of any part of the area is seriously injured, which is what the Act says, or that the waste land has become an eyesore, which is what the Minister's explanatory memorandum said. Whatever else may be done, we doubt whether s. 33 is appropriate, on the facts as given in the query.

9.—Water Act, 1945—*Restricted supply—Period—Initial fixing.*

Section 16 of the Water Act, 1945, empowers a water company to impose certain restrictions on the supply of water for garden purposes, the wording being: "they may for such period as they think necessary prohibit or restrict as respect the whole or any part of their limits of supply," etc. They are further required to give public notice of the restriction and the date when it will come into force. The particular company stated the beginning of the prohibition and intimated that the prohibition "will be in force until further notice." In view of the necessity to state a period, and I conclude a period must have a beginning and an end, do you think the notice is bad? AUL.

Answer.

Certainly a period must have an end as well as a beginning, and we were at first attracted by your view of the legal effect of the company's notice. But the section does not say that the company are to give notice of the length of the period, or announce at the outset how long the period will be. Were this obligatory, the company might be tempted to fix at the outset a period (say until September 30), which might be unnecessarily long. On the whole, therefore, we think the notice is effective, though it would have been better if the undertakers had been required in terms to give notice of the ending of the restriction.

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COUNTY BOROUGH OF WEST HAM

Appointment of Assistant Solicitor

APPLICATIONS are invited for appointment of Assistant Solicitor, Salary A.P.T. VII/VIII, £635 to £760 (plus London Weighting £20-£30 according to age)—with commencing salary according to experience. Experience in Town Planning work an advantage.

Forms of application with further details may be obtained from me and must be returned by November 11, 1950, accompanied by two recent testimonials.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

NOTTINGHAMSHIRE COUNTY COUNCIL

Assistant Solicitor

APPLICATIONS are invited for the above appointment in my office within the Grades VIII to X of the National Conditions of Service (£685—£1,000). Candidates should have had considerable experience in local government law and practice and the commencing salary will be fixed by me according to the qualifications of the person appointed. Terms and conditions of appointment can be obtained upon application at the office and applications must be received not later than Monday, November 6, 1950.

K. TWEEDALE MEABY,
Clerk of the Peace and of the County Council.

Shire Hall,
Nottingham.

October 10, 1950.

CRICKLADE AND WOOTTON BASSETT RURAL DISTRICT COUNCIL

Appointment of Clerk and Financial Officer

APPLICATIONS are invited for the above appointment from persons having legal and local government experience. Salary according to qualifications.

The person appointed will be required to devote the whole of his time to the duties of his office.

All fees received by the person appointed in his official capacity (except election fees) shall be paid into the council's account.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937. Members of the council's staff are eligible to apply.

Applications, stating salary required, age, qualifications and details of present and past appointments, should reach the undersigned, together with copies of three recent testimonials, not later than November 1, 1950, endorsed "Clerk and Financial Officer."

P. D. SUGARS,
Clerk of the Council.

Council Offices,
High Street,
Wootton Bassett,
Wilts.

October 13, 1950.

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SALOP COUNTY COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor ranking next in seniority to the Senior Assistant Solicitor.

Applicants must have a sound knowledge of conveyancing and general legal work and experience in advocacy and with committees. The commencing salary will be not higher than the maximum of Grade A.P.T. IX (£750×£50—£900 per annum), which is the established grade for the post, but the grading is at present under review in common with other senior appointments.

Applications (no forms issued), stating age, education, qualifications and experience and giving the names of two referees, should reach me on or before November 8, 1950.

G. C. GODBER,
Clerk of the County Council.

Shire Hall,
Shrewsbury.
October 24, 1950.

COUNTY OF EAST SUSSEX

Appointment of Male Probation Officer

THE East Sussex Combined Probation Committee invite applications for the appointment of a whole-time male Probation Officer to serve in the East Sussex Combined Probation Area.

The appointment will be subject to the Probation Rules and the scale salary will be paid, subject to deductions for superannuation. The selected candidate will be required to pass a medical examination.

Applicants must be trained in probation work and the selected candidate will be required to provide a motor car for which an allowance will be paid. He will be desired to live in the East Grinstead or Uckfield areas.

Applications, stating age, experience, educational qualifications and present appointment, together with a copy of one recent testimonial and the names of two referees, should reach me not later than Saturday, November 11, 1950.

H. S. MARTIN,
Clerk of the Probation Committee.

County Hall,
Lewes.

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